Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION for tenant's application

Dispute Codes MNDC, FF

Introduction

The landlords and tenant had filed cross applications and the proceeding commenced on September 22, 2015 and was heard over four different dates. Interim decisions have been issued as well as a final decision with respect to the landlord's application. Those decisions should be read in conjunction with this decision. This decision represents the final decision that will be issued with respect to the tenant's monetary claims against the landlords for damage or loss under the Act, regulations or tenancy agreement.

Both parties appeared or were represented at all of the hearing dates and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Has the tenant established an entitlement to compensation from the landlords, as claimed, for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy was set to commence on September 1, 2013 for the monthly rent of $4,300.00. The tenancy ended on December 1, 2015. .

The tenant is seeking compensation totalling $25,000.00 which was broken down into six components. Although I was provided a considerable amount of oral and written submissions from both parties, with a view to brevity I have only summarized the parties' positions below.

1. Aggravated Harassment -- $8,149.89

The tenant submitted that while she was working out of town her husband, BR, telephoned her to tell her that the female landlord, YYB, had come to the rental unit, unannounced, and demanded keys for the rental unit, called the police and accused Br of assaulting YYB.

BR testified that on July 14, 2015 YYB rang the doorbell several times since he did not answer the door right away because he was occupied. When he answered the door the landlord was aggravated and demanded the keys to the rental unit so that she could give them to the realtor. BR doubted this explanation and refused to give the keys to YYB. YYB was also demanding the payment of rent. YYB tried recording the interaction and tried to enter the rental unit but BR stopped her and closed the door. Both YYB and BR called the police. When the police arrived YYB complained that BR had scratched her arm. BR denied doing so and the police compared the scratches on YYB's arm to the hands of BR. According to BR, the police were not persuaded that he had scratched YYB and informed YYB that if she were to file a false complaint she could be charged with mischief. YYB did not file a complaint.

The tenant described how her husband suffered a great amount of stress and sleepless nights due to the possibility that he would be charged with assault which would impact his ability to travel internationally and have an impact on his ability to earn an income. The tenant submitted that counselling would have been of benefit but that they did not have the money to pay for counselling. The tenant submitted that the stress upon her husband had a negative effect on the whole family. As well, the tenant claimed that she missed some hours of work while she was working out of town.

BR obtained a copy of the police report. The police report was received after these proceedings had commenced. The tenant was given authority to read the police report into evidence.

As to the amount claimed for compensation, the tenant explained that it was calculated as being two months of income for both the tenant and her husband multiplied by 50%.

YYB testified that she attended the property on July 14, 2015 with her mother. YYB acknowledged ringing the doorbell several times because there was no answer. When BR finally answered the door she asked for a copy of the key to the rental unit and he refused to give her one. He also refused to allow her to make a copy of a key. YYB claims that it was BR that was very angry which is why she tried to record the interaction. YYB testified that BR tried grabbing her phone and then pushed her out of

the door and shut it in on. YYB testified that when the police arrive she was rubbing her arm because it was hurting and the police looked at it. After the police investigated the incident YYB told the police she did not want to press charges because the tenant was out of town and BR was taking care of the tenant's children.

YYB's representative pointed out that it is not unreasonable to expect that the landlord would attend the property when attempts to reach the tenant by telephone went unanswered. There was no forced entry and no charges were laid against BR. The landlord's representative questioned the impact the incident had on the tenant. The amount claimed is not supported by evidence and there is no proof of stress or loss. The tenant submitted their claim is based upon their income yet the tenant had previously testified that they did not have money for counselling.

The male landlord submitted that had the anger and frustration could have been avoided had the keys and rent been provided to the landlord as requested.

2. Excessive RTB filings and expenses – $7,582.62

The tenant submitted that the landlords have served her with several 10 Day Notices to End Tenancy for Unpaid Rent and that over four dispute resolution proceedings the matter was resolved in favour of the tenant. The tenant was of the position that the excessive filings were motivated by the male landlord's desire to move in to the property and exacerbated by the male and female landlords not sharing information with each other.

The tenant seeks compensation for 140 hours of time spent by her or her husband, at the hourly rate of $52.60 based upon their 2014 tax filings, preparing and participating in the dispute resolution proceedings. The tenant also seeks out of pocket expenses of $218.04 for costs related to serving documentation.

The landlord denied issuance of 10 Day Notices to End Tenancy for Unpaid Rent was related to an ulterior motive to move into the rental unit. Rather, the Notices were issued because rent had not been paid.

It was undeniable that the parties had participated in four dispute resolution proceedings involving unpaid rent; however, upon extensive examination during the second hearing date, I had determined that rent had not been paid. I noted that the tenant had been presented at previous dispute resolution proceedings by her husband, who identified himself as a tenant, and that YYB had not been present at the previous dispute resolution hearings. The Arbitrators making previous decisions relied upon a document

signed by YYB on December 24, 2014 that indicated that there were no outstanding rent payments and the Arbitrator's did not have the benefit of hearing from YYB.

In hearing from the parties during these proceedings I had determined that YYB signed the subject document upon receiving post-dated cheques on December 24, 2014 in amounts that would satisfy the rental arrears and a promissory note from BR. BR acknowledged to me, very reluctantly, that the post-dated cheques he gave to YYB were not cashable because there were insufficient funds in the bank account on which the cheques were written. BR went on to attribute the lack of funds in the bank account as being the fault of YYB. BR submitted that he and YYB entered into a business relationship and that YYB had not business income as expected.

YYB acknowledged that she saw products delivered to the tenant and/or BR at the rental unit and had enquired about the business opportunity; however, she denied that there was a certain amount of business income she was required to generate.

3. House leakage & damages -- $6,802.50

The tenant submitted that water had been leaking in the office and the garage. With respect to the office, the tenant submitted that the office smelled mouldy and there was obvious water damage to the base of the wall. The water leak was attributable to a leaking skylight. The water damage was seen at the time of moving in and in November 2013 the skylight, siding and eave troughs were repaired; however, the mouldy wall was not repaired until May 2014 despite several emails to YYB. The tenant claimed that the office was not useable due to the mould that remained in the insulation and wall. The tenant submitted that this room was to be used as her husband's office space but he developed a cough after using the room. The tenant seeks compensation of $2,902.50 for loss of use of the office based upon the square footage of the garage multiplied by nine months. In addition, the tenant seeks recovery of $150.00 for prescription medicine for her husband. I noted that prescription receipts were not before me to which the tenant explained that they have requested duplicate receipts from the pharmacy but have not yet received them.

At the start of the tenancy the tenant also noticed a water stain in the ceiling of the garage approximately four feet across. When it would rain a bubble formed in the ceiling. The tenant notified YYB who wanted the tenant to deal with it because YYB did not have the funds to make the repair which were estimated to be $4,700.00. The tenant explained that this repair was never made and as a result the tenant could not store items in the garage beneath the bubble. The tenant seeks compensation of $3,750.00 calculated as $150.00 per month multiplied by 25 months, the number of

months until the time of filing this application. During the hearing, the tenant requested the award be increased to account for the months up until the end of the tenancy.

YYB responded by stating that she gave money to the tenants for the skylight repair. The tenant had also obtained an estimate to remediate the mould and water damage of $50,000.00 which the landlord found to be excessive. More time went by as the tenant continued to get estimates. YYB finally hired a person to repair the water damage and there were several times that the tenant was not home to facilitate the repair.

YYB was less clear as to the garage repairs since there was much less communication from the tenant about the garage. YYB recalled a yellow stain on the ceiling of the garage.

YYB pointed out that the tenancy agreement provides that the tenant is responsible for property maintenance such as clearing debris from the drain in the deck above. YYB also explained that, as a woman, she is unfamiliar with house maintenance which is why she left it up to the tenant to deal with.

The landlord's representative argued that the compensation sought by the tenant for loss of use of the office is excessive as the entire space in the office was not affected. The landlord's representative also questioned the loss of the garage especially considering the tenant did not pursue the matter.

The male landlord was of the position the tenant could have approached him about necessary repairs especially after serving the tenant with 10 Day Notices that provided for his name and service address, yet she never did. Had the tenant approached him about the need for repairs he would have addressed it.

The landlord also pointed out that the tenant did not seek repair orders by filing an Application. Rather, the tenant allowed a claim to build which the landlord views as the tenant's attempt to avoid paying the outstanding rent.

The tenant countered with the argument that the entire office was unusable because of mould that was present even if the water damage was a relatively small area. The tenant also acknowledged that the garage was not mentioned more often because repairing the office was of greater importance; however, YYB was aware of the garage leak because it was included in the quotes the tenant obtained and submitted to YYB. The tenant also stated that she did not seek repair orders because she did not know her rights at that time.

4. Top dishwasher not working -- $ 800.46

The tenant submitted that the top portion of the dishwasher was not working and that she emailed YYB about the matter four times between December 2013 and March 2014. The landlord had sent a technician one time in January 2014 but the top dishwasher stopped working shortly thereafter. The technician had advised the tenant to ensure the dishes are rinsed before loading them into the dishwasher and the landlord refused to make any further repairs. The tenant figured that they would have to endure the inconvenience of washing many dishes by hand or running loads more frequently. The tenant seeks $20.00 per month for 21 months in compensation for loss of the top portion of the dishwasher. The tenant also seeks compensation of $380.46 for 10 hours spent researching the error code that appeared on the dishwasher.

The landlord's representative pointed out that the dishwasher had a top part and a bottom part and that the bottom part was always working. The landlord saw the problem as being too much food waste entering the dishwasher based upon the technician's visit to the property and the tenant did not complain about the dishwasher further. The landlord did not understand the tenant's claim for $800.00 as the tenant did not suffer any expenses as a result.

The male landlord submitted that the tenant did not notify him of this matter and he would have had fixed anything that was in need of repair. The male landlord saw this claim as a way to avoid paying the outstanding rent.

The tenant responded by pointing to emails to YYB about the dishwasher.

5. Broken refrigerator -- $696.49

The tenant submitted that the refrigerator broke down on December 1, 2014. When the tenant notified the landlord YYB's response was to instruct the tenant to repair it or replace it. The tenant had a repair person attend the property two days later at a cost of $346.49. The tenant seeks to recover the cost of the repair plus $350.00 for loss of food. The tenant claimed to have purchased ice in an attempt to keep the food cold but the food thawed and was lost due to spoilage.

The landlord's representative stated the landlord was agreeable to repaying the tenant for the cost of the repair. However, the representative pointed out that the tenant did not provide evidence to support the claim for loss of food. Also, the lnadlrod included a copy of a text message from the tenant made on December 5, 2014. In the text message the tenant writes: "Btw fixed the fridge…better than new." That text is followed

by another one sent on December 8, 2014 indicating the tenant has a cheque ready for the landlord and there is no mention of spoiled food.

6. Delayed move in – $968.04

Although the tenancy agreement stipulates that the tenancy was to commence September 1, 2013 the tenant submitted that she sought YYB's agreement to move in earlier, on August 31, 2013, via email. The tenant then asked to move in even earlier, on August 30, 2013 but the landlord was not agreeable. The tenant took that to mean the tenant could still move in August 31, 2013; however, when the tenant and the moving company arrived at the property on the afternoon of August 31, 2013 YYB was still in the process of moving out. It became obvious that YYB would not be in a position to turn over possession despite waiting 1.5 hours. YYB had permitted the tenant to use the garage space and the dining room to store belongings but the tenant's moving company was of the opinion that it would be more efficient to move once. The tenant's belongings were then returned to the moving company's warehouse and stored until the following day when they were able to obtain possession of the house. The tenant submitted that the cost of waiting for YYB to vacate and returning the moving truck to the yard only to try again the next day cost the tenant an extra $968.04 in moving costs. The tenant explained that had the tenant known that YYB would not be able to give the tenant early possession they could have arranged to take the possessions directly to the warehouse instead of travelling to the rental unit, waiting and then returning to the warehouse. The tenant seeks to recover this extra expense from the landlord.

The landlord's representative was of the position that the landlord's obligation to provide possession to the tenant was as provided in the tenancy agreement which was September 1, 2013. The representative pointed out that the tenant was not required to pay rent for any time prior to September 1, 2013 and the email referred to by the tenant was not provided as evidence.

I also noted that the email referred to by the tenant was not included in the tenant's evidence package. The tenant asked to read the email into evidence which I permitted. I noted that the email read by the tenant did not clearly indicate the parties had already agreed that the tenancy agreement would be amended to provide the tenant possession on August 31, 2013. The tenant then explained that that agreement was entered into verbally with YYB during a telephone conversation.

The male landlord submitted that, if anything, the landlords were trying to do their best to provide the tenant with early possession but the landlords were not bound to do so.

The landlord also questioned the amount claimed by the tenant, which seemed excessive to the landlord, and why this matter was not raised with the landlord earlier.

Analysis

Awards for compensation are provided in section 7 and 67 of the Act. A party that makes an application for monetary compensation against another party has the burden to prove their claim. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application took reasonable steps to minimize the damage or loss.

In this case, the tenant bears the burden of proof. The burden of proof is based on the balance of probabilities. Generally, where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. Also of consideration is the credibility of the party making the submission. With respect to the testimony of the tenant, BR, and the landlord YYB I had noted inconsistencies and elusive responses, and omission of material facts. For instance, the tenant testified that their previous home was owned by her and/or her husband when in fact it was not and the truth was only revealed upon further questioning of facts. Also, BR pointed to and sought to have a document signed by YYB to be conclusive evidence that rent had been paid, when in fact rent had not been paid. Only upon further probing was it revealed, reluctantly, that the document had been signed by YYB upon her receipt of post-dated cheques that were not negotiable. Further, in hearing from YYB with respect to the incident of July 14, 2015 I found her participation lacked clarity, was evasive, and was inconsistent with the police report read into evidence. Accordingly, I did not place much weight on their testimony unless it was supported by other corroborating evidence.

Upon consideration of all of the evidence before me, I provide the following findings and reasons with respect to the tenant’s claims against the landlords.

1. Aggravated Harassment (Loss of Quiet Enjoyment)

Under section 28 of the Act, a tenant is entitled to quiet enjoyment of the rented premises. Quiet enjoyment includes freedom from unreasonable disturbance or significant interference by the landlord.

I find it undeniable that the YYB and BR had an altercation on July 14, 2015 and the police were called. However, the tenant seeks compensation based on the income of her and her husband for two months, yet the tenant did not provide documentation to corroborate a loss of income. Therefore, I find the tenant failed to demonstrate a loss in the amount claimed.

In hearing from both parties, I find it likely that the conduct of both YYB and BR was unbecoming and could have been handled better. However, in recognition that the police investigated an allegation by YYB that BR had assaulted her at the residential property when the investigation determined it was unlikely, I accept that the conduct of YYB was highly disturbing. I accept that tenant was impacted by this when she was informed of the situation by her husband. I find the tenant suffered a loss of quiet enjoyment of the rental unit on July 14, 2015 but the loss of quiet enjoyment beyond July 14, 2015 is not supported by other evidence. Therefore, **I determine it appropriate to make a nominal award to the tenant in an amount equivalent to one day of rent or $138.70.**

2. Excessive RTB filings & expenses (Loss of Quiet Enjoyment)

The RTB filings dealt with 10 Day Notices to End Tenancy for Unpaid Rent. The tenant takes the position that this caused her to spend several hours to prepare and participate in the dispute resolution proceedings. However, I find the filings could easily have been avoided by paying the rent.

Further, I find the tenant's claim for compensation to be very troubling. I noted that in the previous dispute resolution decisions, the tenant had put forth a document indicating the rent had been satisfied. Yet, there was a material omission on part of the tenant's submission which was that the document was issued upon receipt of post-dated cheques to cover the outstanding rent that were not negotiable. The tenant would be well served to consider that an omission of a material fact that would have an impact on the outcome of a decision is considered fraud.

Finally, as to BR's argument that the cheques he gave to YYB were not negotiable because YYB failed to generate sufficient income for his business, I find that argument

without merit. The tenancy agreement does not indicate that the tenant's obligation to pay rent is conditional upon the landlord generating a minimum amount of business income for the tenant's husband.

In light of the above, I find the tenant's claim for compensation for having to respond to 10 Day Notices to End Tenancy for Unpaid Rent when rent was in fact outstanding to be absurd and I make no monetary award to the tenant for her failure to pay rent. Therefore, **this portion of the tenant's claim is dismissed**.

3. House leakage and damages

With respect to the water damage and mould in the office, I find the tenant has submitted sufficient evidence, including photographs, to demonstrate that mould was present in the office. Although the landlord repaired the property to stop the ingress of water in November 2013 the mould was not remediated until May 2014.

Despite the landlord's concerns about the amount of the quotes obtained by the tenant, the obligation to repair and maintain a property is the burden of a landlord as provided under section 32 of the Act. A tenant is not obligated to obtain quotes or make arrangements for repairs to a structure unless the damage is caused by the tenant and in this case, the damage was the result of a leaking roof. Even if a term of a tenancy agreement stipulates that a tenant is to make repairs, such a term would be unenforceable by virtue of section 6 of the Act which provides that a term in a tenancy agreement that conflicts with the Act is unenforceable. Further, the landlord's financial situation or lack of experience in making repairs is not a basis under the Act to delay in making necessary repairs. Therefore, I find the landlord was negligent in making the necessary repairs to remove the mould in a timely manner and I find the tenant entitled to compensation for loss of use and enjoyment.

I accept that the exposed mould likely had an adverse health effect on a person using the office for more than a brief period of time rendering the office was not suitable for occupation. As a result I find the tenant's request for compensation based on the square footage of the room to be within reason. Therefore, **I grant the tenant's request for compensation of $2,902.50 for loss of use of the office for nine months.**

I make no award for cost of prescriptions as this part of the tenant's claim was not supported by medical records or receipts.

As for the leak in the garage ceiling I find the tenant has provided sufficient evidence, including photographs, to demonstrate that the ceiling leaked and that the landlord was notified of the issue by way of emails. For reasons given above, I find the obligation to make this repair was that of the landlord and not the tenant. I also find it reasonable that the space below the leak became unusable. In the tenant's photographs I can see that there are possessions stored in the garage; thus, I find the entire garage was not unusable. However, the tenant seeks compensation of $150.00 per month which I find is more likely the value of the entire garage. Therefore, I find it more appropriate to limit the value of the loss of a portion of garage space to $50.00 per month.

I also find the tenant's claim for compensation for 25 or more months for loss of use of the garage to be unreasonable when I consider that the tenant is obligated to take reasonable action to mitigate losses. The tenant did not file an Application for Dispute Resolution to seek repair orders. Nor, did the tenant approach the male landlord once he became involved in the tenancy matters.

The landlord did not make the necessary repair to the garage ceiling when repairs were made to the leaking roof in November 2013. Nor, did the landlord make the repair when the landlord had the mouldy office space remediated in May 2014. At this point in time I find it reasonable to expect that the tenant ought to have realized that it was unlikely the landlord was not going to make the repair to the garage and the tenant should have sought other remedies such as requesting a repair order by filing an Application for Dispute Resolution. Although the tenant testified during the hearing that she was unaware of her right to do so, I reject that position because in an email she wrote to the landlord on March 6, 2014 she states she will file a complaint. Therefore, I limit the tenant's claim to loss of use to May 2014.

In light of the above, **I award the tenant compensation of $450.00 for loss of use of the garage**, calculated as $50.00 per month x 9 months.

4. Top dishwasher not working

It was undisputed that the top portion of the dishwasher had stopped working and the landlord sent a technician to make the repair one time. The tenant had complained of the issue from December 2013 through March 2014 via email and indicated she was following the technician's instructions to rinse the dishes before loading them. I accept that the landlord did not take sufficient action to respond to these complaints and failed to comply with the requirements of the Act to repair and maintain the rental unit. I also find the tenant's request for compensation of $20.00 per month to be reasonable for loss of use of one-half of the dishwasher. However, I find the tenant's request for 21 or

more months of compensation indicates a failure to mitigate losses on part of the tenant. As described previously, in the email written by the tenant in March 2014 she indicates the tenant will “file a complaint” if the landlord did not respond. Therefore, **I limit the tenant’s award to loss of use for the months of December 2013 through March 2014 or $80.00.**

I make no award for the tenant’s request to be compensated for time spent researching the error code appearing on the dishwasher. Although the tenant claims she spent 10 hours, I find this number of hours excessive in the absence of any further details. Further, the landlord had not agreed to compensate the tenant for research. Nor, is the tenant obligated to perform research for repair issues under the Act and had the tenant familiarized herself with her rights and obligations under the Act the tenant could have avoided such efforts. Therefore, I make no award to the tenant for time she spent researching an error code.

5. Broken refrigerator

The landlord was agreeable to compensating the tenant for the cost of repairing the refrigerator. Accordingly**, I grant the tenant’s request to recover $346.49 from the landlord for the repair made to the refrigerator.**

I deny the tenant’s request to recover $350.00 in loss of food as I find this portion of the claim was unsupported by other evidence such as receipts for groceries purchased or photographs of groceries lost due to spoilage. Nor, did the tenant indicate any spoilage of food in her communications with the landlord shortly after having the refrigerator repaired leaving me doubtful that the tenant suffered a loss such as the one she is claiming. Further, appliances are subject to failure from time to time and the tenant acknowledged that it broke down without warning.

6. Delayed move-in

The written tenancy agreement before me stipulates that the tenant would be provided possession of the rental unit on September 1, 2013. The tenant was provided possession on September 1, 2013. However, the tenant asserts that the parties agreed to change the possession date to August 31, 2013.

Section 14 of the Act permits parties to amend terms of tenancy, except for some specific terms, if both parties agree to the change. There is no specific requirement for the amendment to be made in writing although in publications provided to landlords and tenants by the Residential Tenancy Branch, parties are encouraged to record any

changes in writing to avoid disputes. The tenancy agreement was not amended in writing and, not surprisingly, now the parties are now in dispute as to whether the possession date changed by way of a mutual agreement.

In this case, the tenant referred to an email as evidence the parties had agreed to change the possession date yet the subject email was not included in evidence. Although I permitted the tenant to read from an email during the hearing I noted that the email was not very clear. Then the tenant testified that the agreement to change the possession date had been entered into orally during a telephone conversation. I also had discussions with the tenant concerning their previous residence. I found the tenant's testimony subject to change and not supported by clear evidence to demonstrate that the landlord and tenant had agreed to amend their tenancy agreement to change the possession date. I also consider it significant factor that this issue was not raised by the tenant much earlier during the tenancy if there had been such a significant breach of their tenancy agreement on part of the landlord that resulted in a loss of nearly $1,000.00 to the tenant especially when the tenant had been in regular communication with the landlord early on in the tenancy concerning other matters. In taking all of these factors into account, I find the tenant did not satisfy me that the parties had mutually agreed to amend their tenancy agreement to change the possession date. Since the tenant was provided possession of the rental unit on the date stipulated in the written tenancy agreement I find the tenant did not establish that the landlord breached the tenancy agreement and **I dismiss this portion of the tenant's claim.**

7. Filing fee and Monetary Order

Given the tenant's very limited success in this application, **I award the tenant recovery of $25.00 of the filing fee** she paid.

Based upon all of the above findings, the tenant is provided a Monetary Order calculated as follows:

Loss of quiet enjoyment (harassment)	$ 138.70
Loss of use and enjoyment of office	2,902.50
Loss of use of garage space	450.00
Loss of use of top dishwasher	80.00
Refrigerator repair	346.49
Recovery of filing fee, in part	25.00
Total	$3,942.69

To enforce the Monetary Order it must be served upon the landlords and it may be enforced in Provincial Court (Small Claims).

Conclusion

The tenant has been awarded compensation of $3,942.69 and provided a Monetary Order in that amount to serve and enforce upon the landlords.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 15, 2016

Residential Tenancy Branch