



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MARTELLO TOWER APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC RR FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for; a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Two parties attended on behalf of the landlord – Landlord OL (operations manager) and Landlord OC (building manager) Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss?

Is the tenant entitled to reduce rent for repairs?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began June 15, 2009 as a month to month tenancy. The current rental amount of \$2039.00 is payable on the first of each month. Landlord OL testified that he continues to hold a \$900.00 security deposit paid by the tenant at the outset of the tenancy. As of the date of this hearing, the tenant continues to reside in the two bedroom, one and a half bath apartment rental unit on the twenty ninth floor.

The tenant applied for compensation totalling \$16 781. 33 – I have provided the details of her monetary request, with a \$1854.14 discrepancy as follows,

| Item | Amount |
|--|-------------------|
| Insurance deductible for stolen bicycle | \$ 500.00 |
| Insurance deductible for items damaged as a result of a water leak | 500.00 |
| 3 days spent residing elsewhere as a result of mold remediation | 203.91 |
| Cost to replace items below bathroom sink | 50.00 |
| 1 day without the use of bathroom after water leak/flood | 67.97 |
| 21 days without the use of the den after water leak | 1427.37 |
| 4 days without use of indoor of unit as a result of repair work on building | 271.88 |
| 35 days without the use of the den after re-piping in the residential premises/apt. building | 2378.95 |
| 36 days “unliveable apartment and costs for cleaning, packing to allow for construction within the rental unit | 2446.92 |
| 14 days without the use of den because of a water leak | 951.58 |
| 6 days without water in the apartment building | 407.82 |
| Packing and cleaning assistance (2 payees) | 1026.00 |
| Food and accommodation costs when out of residence | 4594.79 |
| Recovery of Filing Fee for this Application | 100.00 |
| Total Monetary Amount Sought by Tenant | \$14927.19 |

The tenant testified that she is a stay-at-home-mother with a young child in the residence who is not yet school age. She testified that she and her son are home most of the daytime hours. The tenant testified that she made repeated verbal requests with

respect to all of the above monetary or repair related issues but that she did not submit any of her requests to the landlord in written form. The landlord acknowledges most of the tenant's requests. The landlord stated that the tenant makes too many requests.

The tenant testified that the building's bicycle lockers were broken into and that her bicycle was stolen in June 2013. She testified that she made an insurance claim and was compensated for her bicycle. She submitted that the landlord should pay the \$500.00 deductible she was required to pay for her bicycle claim. The tenant submitted a copy of a cheque for \$950.32 from the insurance company in relation to her bicycle.

The tenant testified that there have been several plumbing issues over the course of her tenancy. She testified that, in June 2014, there was a large flood while she was away. She testified that the landlord's representatives (including the building manager at that time) entered her rental unit while she was away. She testified that, on her return, it was necessary to file an insurance claim with respect to damaged property in her unit as a result of the flood. She was compensated \$424.44 by the insurance company. She submitted that the landlord should pay the \$500.00 deductible that she was required to pay for her contents insurance claim. The tenant submitted a copy of her insurance claim form indicating loss of \$5736.09 in personal property as a result of the leak in the residential premises and \$235.68 in additional living expenses.

The tenant testified that, as a result of the June 2014 leak, there was mold in her rental unit from September to October 2014. She submitted a copy of a handwritten form dated November (12) 2014 from a mold remediation company that stated "all affected areas have been scraped away & thoroughly cleaned w/ a [non-toxic] yet very efficient microbial...mold growth has been eliminated." She testified that the landlord offered to provide her with a different unit within the residential premises/apartment complex but that she did not want to move – she did not want to change floors or have a different view. She submits that the landlord should compensate her for the days when she was forced to be out of the rental unit while repairs and mold remediation took place in the rental unit (including but not limited to November 1-3, 2014).

The tenant testified that, as a result of a water leak in her main bathroom in January 2015, she was without the use of that bathroom for approximately 1 day and that the items under her bathroom sink had to be replaced. The tenant submitted that the landlord should be responsible to replace the items under the bathroom sink in the amount of \$50.00 and that the landlord should be responsible to compensate her for 1 day without use of her main bathroom which contains the bath/shower for the unit.

The tenant testified that, on three separate occasions, she was unable to use her den for a period of time. She testified that, in the spring of 2015, August 2015 and October 2015 as a result of leaks, she had to move all of the items in her home to ensure that her items were not water damaged and that mold did not develop on her possessions within the rental unit. The tenant submitted photographic evidence showing what she claimed was mould on the back of one of her bookcases. The tenant submitted documentary evidence in the form of posted notices from the landlords regarding plumbing renovations that advised “you may want to cover up certain items with plastic (poly)” during renovations.

The tenant testified that, over the course of the pipe repairs, there was constant jackhammering in a variety of surrounding rental units during the day. As a result, the tenant testified that she could not keep her child in the home as he was unable to nap or play and the sound was also very disturbing to her. She submitted that the landlord should compensate her for four where she was unable to remain in the interior of her rental unit.

The tenant testified that, when the residential premises underwent re-piping, she (had to) pull everything away from her walls to ensure that the plumbers and other workers repairing the walls could properly access the parts of her unit that required repair. She testified that, because all of her items were packed up in the middle of her rental unit, her child could not play with toys and they could not enjoy their residence.

The tenant testified that she mitigated her monetary loss as a result of these inconveniences by staying with family when she was able. She testified that, at other times, because of the high cost of staying in a hotel in her residential area, she decided to take the opportunity to travel, attending various locations including a cruise to Hawaii, a cruise to Miami, Florida and a stay in Disneyland, California.

The tenant submitted photographs intended to document the covering of her possessions in certain rooms of the house; the movement of those possessions away from the wall and some bubbling, marks, discolouration on the walls as a result of leaks. The tenant testified that, generally the landlord does not do repairs within a reasonable time after requests are made for repairs. The tenant expressed frustration at the landlord’s continued rent increases when she is dissatisfied with the quality of the residence.

Landlord OL submitted that the landlord cannot be held responsible for the tenant’s stolen bicycle as the room where bicycles can be stored. He testified that the bicycle room is a secured area provided to tenants to store their bicycles but it is not subject to a formal agreement (like the storage area or residential tenancy)...

Landlord OL submitted that the tenant was compensated by the insurance company based on their expert evaluation of her loss and that the landlord should not have to compensate her further. He submitted that most of her claim consisted of request for compensation for insurance deductibles and losses she was unable to recover from her insurance claims. He submitted that the tenant did not have evidence to support her claims.

With respect to the issue of mold, Landlord OL referred to the note submitted by the tenant from the mold remediation company that does not identify mould in the rental unit and further indicates that any issues are resolved. The landlord submitted the tenant does not have evidence of the existence of mold. The landlord also stated that the remediation was done out of courtesy to her and her expressed concern.

Landlord OL discussed the protocol followed by the landlords in addressing emergency repairs including water leaks. The landlord submitted that repairs to the rental unit themselves are compensation to the tenant and that no further compensation is deserved by the tenant. He submitted that the tenant's assessment of "unliveable" premises is her own assessment and based on no objective evidence. Furthermore, he submitted that repairs were undertaken immediately on becoming aware of issues within the premises or certain units.

Landlord OL also referred to notices and schedules created by the landlord and submitted by the tenant for this hearing. He submitted that the landlord posted terms of repairs and created a reasonable schedule to allow minimum interference to the tenants.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and the arguments presented are reproduced here. I have provided the facts that I believe were necessary to include above and below, I have focused my analysis of this matter to the most relevant information provided.

Some of the issues raised by the tenant in her multifaceted claim can be addressed summarily at the outset of this decision.

First, the tenant seeks recover of her insurance deductible with respect to two separate insurance claims; a bicycle theft claim and a damage to contents claim as a result of

one of the many water leaks. I refer the tenant to section 60 of the Act which states that there is a two year limitation period within which to file against another party in a residential tenancy matter. In this case, the tenant's bike was stolen on or about June 6, 2013 and therefore, the timeline has passed to address the matter of the bicycle. I dismiss the tenant's claim with respect to the bicycle. The water leak in the insurance claim also dates to 2013 (June 30, 2013) and therefore is also dismissed. The tenant's claims for both insurance deductibles are dismissed.

I accept the submissions and argument of the landlord as well as the supporting evidence from the mould remediation company: there is insufficient evidence submitted by the tenant to prove there was mould in the rental unit. The tenant's claim for 3 days spent residing elsewhere as a result of mould related issues (\$203.91) is dismissed.

Further, I find that the tenant was not required either by the landlord or by circumstances as I have heard the evidence to pack up her belongings and place them in the middle of her home. The tenant chose to take these precautions and, in the circumstances, based on all of the evidence and testimony, I find that the tenant took extra precautions beyond what was necessary. Therefore, I dismiss the tenant's application regarding packing and cleaning assistance totalling \$1026.00.

While I accept the tenant's testimony that she lost access to one of her bathrooms for the better part of one day, I do not accept that this loss warrants compensation by the landlord. I find that the evidence submitted shows that the landlord attended to the leak within the day, that the leak was minor and that the tenant had a second bathroom to use. While this must have led to minor inconvenience with her young child, it is not as a result of any failure of the landlord to meet his repair obligations nor do I find that there is evidence that it is through some failure to act pursuant to a landlord's obligations that the tenant's bathroom supplies were damaged. Further, the tenant did not provide sufficient detail or proof of the value of the supplies damaged. Therefore, I dismiss the tenant's claim for both 1 day of loss of use of the main bathroom as well as the cost of replacement totalling approximately \$50.00 of any items below the sink.

With respect to the plumbing related issues, I acknowledge that the tenant has been affected by several plumbing issues in the residential premise. I accept the tenant's testimony that, over the course of 70 days total, the tenant did not have access to her den after a water leak. Further, I accept the testimony of the tenant, mainly undisputed by the landlord that the tenant was without water for portions of 6 days total. I accept the tenant's testimony that there were 4 days where she could not stay inside her rental unit as a result of the repair work. I also accept the tenant's testimony that she was required to reside outside the unit for several days as a result of water leaks, damage and repair

work throughout the building.

The tenant's circumstances in that she and her son are home most of the daytime hours affects the nature of the tenant's claim. She and her son are subject to limits to their normal time spent out of the home and the inconvenience and costs associated with going out for the day. I find that, in all of the circumstances, given the number of leaks to her unit, the length of the repairs to the building as well as the effects on the tenant and the care of her son the tenant is entitled to compensation for the inconvenience and disruption of the use of her home and a quiet enjoyment of that home.

The tenant sought to recover \$4594.79 for the cost of accommodations and food for time that she resided outside of the unit. In fact, during the dates when the tenant was out of the residence, she was travelling – to Disneyland, Hawaii and other places. It does not accord with the principles of fairness that the landlord should be responsible to send the tenant on vacation. The tenant argued that the cost of these trips was far less than the cost of staying in nearby hotels however I find that the tenant provided insufficient evidence to support that claim as well as to generally support the claim that she was **required** to leave her home while repairs were conducted. I dismiss the tenant's application to recover food and accommodation costs while travelling.

I note that the tenant testified she mitigated her monetary loss by take the opportunity to travel. I have found that her choice to reside outside of her unit (and to travel) was her decision and that she is responsible for them. However, I also acknowledge that the tenant and her son suffered inconvenience and unrest in their home amounting to a lack of quiet enjoyment.

When a landlord and tenant enter into a tenancy agreement, written or verbal, each is expected to meet their responsibilities under the *Act*; a tenant is expected to pay rent; a landlord is expected to provide the premises as agreed to. If a tenant is deprived of the use of all or part of the premises, the tenant may be entitled to damages. The types of damages an arbitrator may award are; out of pocket expenditures if proved at the hearing in accordance with section 67 of the *Act*; an amount reflecting a general loss where it is not possible to place an actual value on the loss; "nominal damages" where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right; and finally aggravated damages for significant infractions by the landlord to the tenant.

In this case, the tenant has proven that the landlord has, at times not responded to the tenant's requests for repairs in a reasonable time. Further, the tenant has proven that the landlord did not sufficiently address the disruption to day to day life caused by the

repairs within the building. Therefore, I find that the landlord is responsible to compensate the tenant for a loss of quiet enjoyment in a nominal amount reflecting all of the tenant's expenses, loss of use and general loss. I find that the tenant is entitled to a nominal damage award in the amount of \$4500.00 as well as recovery of the \$100.00 filing fee for this application.

Given that the tenant was faced with approximately 4 and a half total months of inconvenience over the past two years as a result of the ongoing disrepair and attempts to repair the building. I do not accept the testimony of the landlord that the tenant's compensation for her inconvenience and troubles is that the repairs have been done.

Conclusion

I issue the tenant a monetary order in the amount of \$4600.00.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: June 23, 2016

Residential Tenancy Branch