



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PUPPY HOLDINGS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MNDC

Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, the Regulation, or the tenancy agreement in the amount of \$4,060.00 and to recover the filing fee.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Caution

During the hearing the Tenant interrupted the Landlord's testimony repeatedly, and began calling him derogatory names. I cautioned the Tenant during the hearing that I would mute her line if she continued to be disrespectful and disruptive during the call. At one point in time during the hearing the Tenant and Landlord began arguing with one another. I then muted both of their lines and cautioned both of them.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover the filing fee paid?

Background and Evidence

The Tenant testified that the tenancy began May 1, 2014. The Tenant moved from the rental unit in March 2015. She stated that she could not be certain as to the date as it was a “very traumatic time” for her.

Previous Hearings

As a result of a hearing which took place on February 17, 2015, the Landlord was granted an Order of Possession.

After another hearing on March 9, 2015, and by Decision and Monetary Order dated March 10, 2015, the Landlord was granted a Monetary Order in the amount of \$1,205.00 as well as authority to retain the Tenant’s \$505.00 security deposit.

The Tenant confirmed that she has not paid the amount outstanding to the Landlord as a result of the March 10, 2015 decision. She further stated that “she was treated like no human being has ever been treated, like a ‘third world person’” by the Landlord and as such does not believe she should be expected to pay the Landlord the amount awarded.

Current Application

In the within action the Tenant sought monetary compensation in the amount of \$4,060.00 for the following:

Return of the rent paid for September 2014 as a result of construction on the parking lot and carport	\$1,010.00
Compensation for losses incurred as a result of mold in the Tenant’s bathroom ceiling and bedroom	\$1,100.00
Compensation for a leaking kitchen water tap	\$250.00
Compensation for rust on the range hood	\$500.00
\$200.00 per month in compensation related to six months of repairs of unit below rental unit	\$1,200.00
TOTAL	\$4,060.00

In her written submissions the Tenant writes that she is requesting \$4,060.00 and as she owes the Landlord \$1,200.00 pursuant to the March 10, 2015 Order, she is seeking a monetary award in the amount of \$2,860.00.

In terms of the request for return of the rent paid in September of 2014 the Tenant alleged that her right to quiet enjoyment was breached as she had to listen to construction 10 feet outside her back door from 6:30 a.m. to 6:00 p.m. in the month of September 2014. She stated that the Landlord was tearing apart the parking lot pavement. The Tenant also alleged that she was given no notice that this construction was going to occur.

The Tenant also sought the sum of \$1,100.00 for damages she claims to have incurred as a result of mold in her rental unit. She claimed that she first noticed the mold three months into her tenancy and it continued to be present in the rental unit from three months into the tenancy until the tenancy ended. She confirmed that she did not seek the assistance of mold specialists to assess the situation.

When I asked the Tenant how she came to the figure of \$1,100.00 she stated that she breathed in mold for months. She claimed the mold was discovered approximately three months into the tenancy. The Tenant further claimed that she "got sick and had red patches on her arms" as a result of the mold. When I asked her if she had any supporting documentation from her doctor to substantiate her claims that her health was affected by the alleged mold she confirmed she did not.

When I asked the Tenant if she cleaned the mold from the rental unit, the Tenant confirmed that she did not clean the mold from the windows as she wanted to retain the evidence for these proceedings.

The Tenant also sought **\$250.00** in compensation for the leaking water tap. She stated that the basis of her claim was that, "this is an inconvenience and no one should have to deal with water leaks and the Landlord should have fixed it". When I asked the Tenant when she brought this to the Landlord's attention, she stated she spoke to the maintenance man on three occasions. She confirmed she did not send any written requests to the Landlord in this regard.

The Tenant also sought **\$500.00** for alleged losses associated with having rust on her range hood. The Tenant stated that the rust fell into her food. When I asked the Tenant whether she brought the range hood to the Landlord's attention she stated that she did so on "numerous times".

The Tenant conceded that she should have been more diligent, and she should have had a move in inspection.

The Tenant further claimed the sum of \$1,200.00 for alleged losses related to further construction which she stated occurred in July 2014 and continued for six months 3-5 days a week for renovation to a unit was unoccupied due to the death of the former tenant. She claimed she was disturbed daily by constant hammering and construction which affected her right to quiet enjoyment.

M.J. testified on behalf of the Landlord. He confirmed that the Tenant moved out of the rental unit on February 23, 2016.

In response to the Tenant's claim for compensation for disturbances caused by the repaving of the parking lot and carport M.J. testified that notices were posted in both elevators, the laundry room and all access doors to the building to advise the tenants that there was going to be construction and to ensure they would not park in the parking lot or garage for a period of three weeks. M.J. further testified that he paid for the tenants' parking outside of these areas. M.J. testified that the construction as delayed a few weeks due to the weather conditions but that in all cases the workers worked within the City bylaws.

In response to the Tenant's claim for \$1,100.00 for issues related to alleged mold in her rental unit, M.J. stated that the Tenant did not bring this to the Landlord's attention.

M.J. stated that the first time he became aware that the Tenant claimed to have mold in the rental unit was when he received her evidence package in March of 2016.

M.J. stated that that the first time he became aware that the Tenant had an issue with a leaking tap was also when he received her evidence package.

M.J. stated that the only request from the Tenant for maintenance was when she dropped something in her toilet and her toilet was replaced as a consequence.

M.J. testified that a move in and move out condition inspection report was conducted (see page 26 of the Landlord's evidence). A review of this document confirms that the Tenant wrote her name and signed the condition inspection report in a manner similar to the manner she wrote and signed her name on her application for dispute resolution.

In response to the Tenant's claim that the range hood fan was rusty and that the rust was falling in the Tenant's food, M.J. testified that the Tenant never brought this to the

Landlord's attention during the tenancy and again only raised this when she submitted her evidence package.

In response to the Tenant's claim that she was disturbed by the renovation to the unit

M.J. stated that the person who died was a friend of M.J.'s for 32 years and the occupant lived there for more than a decade. M.J. stated that the occupants belongings were removed, the carpeting, flooring, kitchen cabinets and bathroom cabinets were stripped within 48 hours. He then hired a professional company to install the new kitchen cabinets and vanity in the bathroom. He confirmed that it took approximately 6-8 weeks to have the custom cabinets built, then the rental unit was repainted, window treatments were installed and finally the floors were installed. M.J. stated that if it as noisy, it would have been three days max for the demolition and installation of the flooring and cabinets and that in all cases the construction occurred between normal business hours.

M.J. stated that the Tenant's claim as to the duration of the renovations is inaccurate. He testified that he was not able to enter the rental unit for two months after the occupant in the lower unit passed away as he was awaiting permission from the Public Guardian and Trustee. He further testified that as a result the renovations began at the end of September and they were completed before Christmas 2014 such that the repairs took approximately 3.5 months.

M.J. further stated that this is the third arbitration; the first was when the Landlord obtained an Order of Possession and the second when the Landlord applied for monetary compensation and to retain her security deposit. M.J. stated that this is the first time the Tenant has brought these allegations forward.

The Landlord submitted that the Tenant moved out February 23, 2015 and did not bring her claim until March 2, 2016 and was therefore "out of time".

The building manager, K.L. also testified on behalf of the Landlord. He stated that five notices were put up regarding the paving of the parking area and the carport and they were located in the lobby, the elevators, on the door, the laundry room and outside.

K.L. further testified that the Tenant never brought to his attention that there was mold in the rental unit or that she was getting sick. He further stated that when she moved in he showed her the rental unit. He said she love the rental unit and said everything was "super". He confirmed however, that when she left it was "not very good" as it appeared she didn't open windows or use a fan to otherwise deal with humidity.

K.L. also testified that the Tenant never told him about a leak in her kitchen faucet or rust on the range hood fan.

K.L. stated that the renovations to unit #201 began September 2014 and they were done December 2014. K.L. stated that the banging was only a few days when he was performing the demolition of the cabinets.

In reply to the Landlord's evidence the Tenant submitted that K.L. did not give honest answers, suggesting he was giving his evidence in "fear".

The Tenant further testified that there was no notice for the construction work. She said it was "intense construction" there was noise, fumes and it started at 6:00 a.m.

The Tenant stated that she "dropped the ball in not responding to the Landlord's previous claims".

Finally, and despite testifying initially that she did not provide written notice to the Landlord of her concerns regarding the rental unit, the Tenant then stated that she mentioned "numerous times verbally *and in writing*"

Analysis

After careful consideration of the evidence before me, the testimony of the parties and on a balance of probabilities I find as follows.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove her claim.

In this case, the Tenant alleged that her right to quiet enjoyment was negatively affected as a result of the repairs to the parking area and the remediation of the rental unit below her.

While it is possible this work was, at times, disturbing to the Tenant; it is equally possible it was not. The onus is on the Tenant to prove her claim in this regard.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment provides in part as follows:

“...Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

...

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

...

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

...

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

After careful consideration of the evidence, and the testimony of the parties, I find the Tenant has failed to prove the Landlord breached section 28 of the *Act*. I find the Tenant has failed to prove the repair work to the parking area and carpet as well as the remediation of the lower unit were unreasonably disturbing; rather, I find these to be a temporary discomfort or inconvenience which does not constitute a basis for a breach of the covenant of quiet enjoyment.

Further, I dismiss the Tenant's claim for compensation related to the construction of the parking area and carpet. I do not accept the Tenant's testimony that she was not informed this work would be conducted. In this regard, I prefer the testimony of M.J. and the building manager, K.L., and I find that adequate notices were posted throughout the rental building. It is inconceivable that the Landlord would have been able to conduct these repairs without notifying the Tenants of the rental building as their vehicles needed to be moved from their regular parking places.

I also prefer the evidence of M.J. and K.L. over the Tenant's with respect to the duration and noise created by the remediation of the rental unit below her suite. I am persuaded by M.J.'s testimony that the work could not commence until authority was granted by the Public Guardian and Trustee.

Similarly, I dismiss the Tenant's claim for compensation for alleged mold in the rental unit, the dripping faucet and rust on the range hood. I accept K.L.'s testimony that the Tenant failed to bring these issues to the Landlord's attention. The Tenant failed to submit sufficient evidence to show that she communicated her concerns to the Landlord during the tenancy. In failing to do so, I find that the Tenant denied the Landlord an opportunity to rectify these alleged issues.

The Tenant testified that she did not participate in a move in condition inspection report and suggested that she was negligent in failing to do so. The evidence submitted by the Landlord confirms she did participate in such an inspection. In addition, the issues she claims to have been present at the start of the tenancy, namely the alleged rust on the range hood and the dripping faucet were not noted on the move in condition inspection report. In all the circumstances, I find she has failed to prove these deficiencies existed or that they caused her any measurable loss.

Further, I note that the Tenant admitted she did not clean the mold from her rental unit as she wished to compile evidence for this claim. At the same time she claims she was so physically harmed by the mold that she was not able to bring her application in a timely manner (notably, she failed to provide any medical evidence to support this claim). *Residential Tenancy Policy Guideline 1* provides that a Tenant is responsible for

cleaning the window sills and ensuring moisture does not accumulate in a rental unit. I find that the Tenant's actions, in failing to clean the moisture or mold, contributed to the build-up of mold and that it was the Tenant's neglect of her responsibility to attend to regular cleaning which caused this problem.

I further note that the Tenant failed to bring these issues to the attention of the presiding Arbitrator at the previous two hearings. It appears the Tenant has brought these allegations forward now simply as an attempt to avoid paying the Landlord the \$1,200.00 owed to the Landlord pursuant to the Monetary Order.

In all the circumstances I dismiss the Tenant's claim.

Conclusion

The Tenant's claim is dismissed in its entirety.

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: October 17, 2016

Residential Tenancy Branch

