



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

On February 29, 2016, the Tenant applied for dispute resolution seeking money owed or compensation for damage or loss under the *Residential Tenancy Act* ("the Act"), regulation, or tenancy agreement; for the return of the security deposit and to recover the cost of the filing fee.

The hearing was reconvened on January 11, 2017. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Parties have participated in previous dispute resolution hearings. On October 31, 2016, I issued an Interim Decision dismissing part of the Tenant's claim including a claim for the return of the security deposit and a claim for the return of April 2015, rent. I dismissed the Tenant's claims that had previously been heard. I find that the Tenant's application is limited to the following claims:

October 2014, rent	50% of monthly rent: \$2,695.00	\$1,347.50
November 2014, rent	50% of monthly rent: \$2,695.00	\$1,347.50
December 2014, rent	50% of monthly rent: \$2,695.00	\$1,347.50
January 2015, rent	50% of monthly rent: \$2,695.00	\$1,347.50
February 2015, rent	50% of monthly rent: \$2,695.00	\$1,347.50
Utilities: Power consumption		\$972.00
Pain and suffering		\$13,233.00

Due to an issue regarding service of evidence raised by the Landlord at the initial hearing, the Tenant was ordered to serve the Landlord and the Residential Tenancy Branch (the RTB) with a copy of any evidence he will be relying on by December 12, 2016. The RTB received 44 pages of evidence from the Tenant on December 15, 2016, via mail. The RTB received a further 15 pages of evidence on December 30, 2016. I find that the 15 pages of evidence the Tenant submitted is late.

The Tenant requested that the 15 pages of late evidence be accepted and considered. The Tenant submitted that he just became aware that evidence provided by the Landlord in October 2016, is misleading.

The Tenants request that the 15 pages be accepted was denied; however, the Tenant provided affirmed testimony about the contents of the evidence. The Tenant applied for dispute resolution on February 29, 2016, and had approximately 10 months to prepare for the hearing and submit documentary evidence. The Tenant had over two months to consider the Landlord's documentary evidence and respond. The Tenant testified that the Landlord wrote a letter and tried to pressure a contractor to sign it. I have considered the Tenant's testimony on this issue in making my Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for damage or loss under the Act, Regulation or tenancy agreement?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on October 1, 2014. Rent in the amount of \$2,695.00 was due on the first day of each month.

The Tenant testified that he was renting a 5 bedroom, two-bathroom upper unit of a house.

Loss of Quiet Enjoyment

The Tenant is seeking compensation in the amount of \$6,735.50 for a loss of quiet enjoyment. The \$6,735.50 amounts to 50% of the monthly rent for five months. The Tenant testified that testified that he lived in the rental unit with his wife and mother in-law.

The Tenant submitted that the Landlord was doing renovations in the downstairs suite that continued from October until January. In addition, the Tenant testified that the Landlord constructed a new bathroom for the Tenant that began in October 2014, and took 3 months to complete.

The Tenant submitted there were workers there constantly. The Tenant submitted that the Landlord entered the property uninvited and without notice. The Tenant submitted that after being disrupted all day, the Tenant would be disrupted by the Landlord fighting with his girlfriend. The Tenant testified that he could hear loud arguments a couple times per week. The Tenant testified that one of the arguments late at night woke his mother in law from sleep.

The Tenant testified that he sent the Landlord an email about the disruptions but the Landlord did not respond. The Tenant provided a copy of an email sent to the Landlord dated February 2, 2015. The email includes comments that the Landlord fights with his workers, and fights non-stop with his girlfriend. The email states that the Tenant has witnessed it 6 or 7 times.

In response, the Landlord testified that he intended to rent the unit for \$2,995.00 per month. The Tenant inquired about renting the unit and was aware that there was ongoing construction. As part of the negotiation for the tenancy, the Tenant asked the Landlord to put another bathroom into the rental unit. The Landlord testified that the Tenant asked for reduction in the rent to in consideration of the construction and the Landlord agreed to keep the monthly rent at \$2,695.00 because of the potential inconvenience of the construction.

The Landlord provided a copy of an email sent to the Tenant on August 5, 2014, prior to the tenancy agreement being signed that states the Landlord is prepared to install another bathroom for the Tenant, and indicates the Landlord will also be having landscaping, patio work, painting, and a chandelier installed. The email states the rent can be reduced to \$2,695.00.

The Landlord testified that the parties signed a contract that states the Tenants will not seek additional compensation due to the construction. The Landlord provided documentary evidence of an agreement between the parties dated October 8, 2014, that states the Tenants:

“will allow the Landlord to do any necessary repairs/ improvements to [the rental property] without recourse or repayment, while the Tenants are living there.

The Landlord testified that the upstairs bathroom construction was completed in January 2015. The Landlord testified that after the new upstairs bathroom was installed for the Tenant, the Tenant demanded further compensation and threatened a law suit.

The Landlord testified that there may have been some construction noise. The Landlord submitted that the Tenants knew there would be construction happening and they accepted the tenancy.

The Landlord testified that he never received any letters from the Tenant regarding noise.

The Landlord testified that the construction in the lower unit started before the Tenant moved in and stopped in December 2014. The Landlord testified that he does not recall any construction happening in the lower suite in January or February 2015.

Utilities

The Tenant is claiming \$972.00 due to the contractor's use of hydro during the construction. The Tenant submitted that the amount of \$972.00 is 1/3 of the amount of hydro they paid.

The Tenant submitted that hydro costs for the house are shared with the lower unit, with the Tenant to pay 66% of the hydro cost. The Tenant testified that the Landlord renovated the downstairs unit and had contractors on the property using the hydro for the construction. The Tenant testified that he raised the issue with the Landlord and asked the Landlord to pay a little more.

The Tenant did not provide copies of hydro bills within the 44 pages of evidence submitted on December 15, 2016.

The Landlord testified that the hydro costs for the house were shared, with the Tenants to pay 70% of the hydro cost. After the Tenant raised an issue with the hydro costs in November, the Landlord submitted evidence that he agreed the Tenant could pay 66% while the construction was ongoing. The Landlord provided a copy of an email dated November 3, 2014, sent to the Landlord from the Tenant. In the email the Tenant asks for the hydro to be split proportionately. The Tenant raised the issue of the use of heaters, lights, and power tools for the construction.

The Landlord testified that the renovations downstairs were not massive. The Landlord testified that he upgraded the downstairs kitchen, bedroom, and bathroom. The

Landlord testified that the contractors used hydro occasionally but very little electricity was needed and they mostly used battery operated tools.

The Landlord provided letters from the contractors stating that very little electricity was needed or used.

The Landlord testified that while he was living in the lower unit he did not use the stove and showered elsewhere, so the Landlord's use of hydro was kept low. The Landlord pointed out that a new bathroom was installed for the Tenants and that some electricity was used for construction of the new bathroom.

The Landlord provided written statements from contractors who worked on the property.

- Contractor R.B. submitted that the carpentry tools he used are energy efficient and do not consume much electricity.
- Contractor S.I. submitted that some tools are battery operated and do not require electricity.
- Contractor R.D. submitted that all of his tools are hand held.
- Contractor D.T. submitted that most if not all of our tools are battery operated, with no need for electricity usage. The statement from D.T. indicates that *"the amount of electricity usage was minimal during the construction and only towards the end we connected three heaters."*
- Contractor D.W. submitted that he usually only uses hand tools; however, he did use an electric grinder for some cutting.

Pain And Suffering

The Tenant is seeking \$13,233.00 for pain and suffering. The Tenant testified that there was constant noise from the Landlord and his girlfriend. He testified there was chaotic behaviour on the property and fighting with contractors. He testified that it took the Landlord 3 months to complete construction on the Tenant's new bathroom.

The Tenants W.D. and H.B. provided testimony. W.D. stated she is 87 years old and submitted that there were fights. She stated that she has forgotten a lot.

H.B. submitted that she knew the property would be renovated. She submitted it was noisy and the Landlord was always on the property arguing with construction workers. She submitted that it would wake them up. She submitted that she believes the Tenants subsidized the Landlord's use of electricity. She submitted that fans were always going. She submitted that it was a chaotic and stressful environment.

A witness for the Tenants, L.N. testified that there was renovations and noise. She submitted that the Landlord would fight with his girlfriend.

The Landlord testified that he was not yelling, screaming, or fighting with his girlfriend. The Landlord testified that he was staying in the lower suite during the construction to supervise the work.

The Landlord testified that contractors needed to enter the Tenants suite to complete the new bathroom and to install the chandelier that was approved by the Tenant.

The Landlord testified that the Tenant was kept informed on the progress of the work, and which contractors would need access to work on the bathroom and chandelier. Initially the Tenant allowed access without written Notice. Later the Tenant demanded written notice for entry and thereafter the Landlord provided written notice to the Tenant. The Landlord testified that he never entered without giving notice, or at all hours of the night. The Landlord submitted that if his workers were in the Tenants unit doing work he would announce his presence, and enter to check on the work.

The Landlord submitted that his contractors have provided statements that he was not fighting with them and that their usage of electricity was low.

The Tenant alleged that the Landlord tried to pressure the contractor D.T. to sign a letter written by the Landlord.

The Landlord testified that the letter from contractor D.T. was written by D.T. and signed by D.T.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Loss of Quiet Enjoyment

Residential Tenancy Policy Guideline #6 Entitlement To Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the rental property. The Guideline states:

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the Act. In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the

tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed. A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

I find that the Tenant was aware that there was ongoing construction at the rental unit and negotiated a tenancy agreement which included the construction of a new bathroom for the Tenant, at a reduced monthly rent of \$2,695.00 per month.

In accepting the terms of the tenancy, the Tenant accepted there would be a loss of quiet enjoyment in exchange for a new bathroom and a lower monthly rent. I find that the Tenant negotiated and benefitted from a \$300.00 per month savings in rent as compensation for the inconvenience.

I also find that the Tenant signed an agreement that states the tenant *"will allow the Landlord to do any necessary repairs/ improvements to [the rental property] without recourse or repayment, while the Tenants are living there.*

I find that the Landlord did not embark on any substantively new construction/ improvements on the property other than what was discussed prior to the parties signing the tenancy agreement. I find that the Tenant entered into an agreement for compensation and agreed to not seek further repayment.

Based on the terms of the tenancy agreement, I find that the Landlord has not failed to comply with the Act, Regulation or tenancy agreement, and the Tenant has not suffered a loss.

The Tenant has not provided sufficient evidence to establish that the Landlord breached the Act, or caused a loss of quiet enjoyment by entering the Tenant's unit improperly or without Notice.

The Tenants' claim for compensation in the amount of \$6,735.50 is dismissed.

Hydro

I find that the parties were to share the cost of hydro on 70/30 basis with the Tenant paying 70% of the cost.

When the Tenant raised a concern regarding hydro consumption in November 2014, the Landlord agreed to share the cost on a 66/33 basis, with the Tenant paying 66% of the cost.

While there is insufficient evidence from the Tenant to establish that the Landlord or the contractors contributed to higher hydro costs by leaving windows and doors open, I find that the contractors did use the electrical outlets.

I accept the Tenants submission that the Landlord was doing renovations in the downstairs suite that continued from October until January. I find that the contractors were using hydro at various times for fans, heaters and power tools.

While the Landlord was paying his share of the hydro during this time, I don't find that it is reasonable that the Tenant should have to pay for hydro use for the construction in the lower suite. While the Landlord testified that he used very little hydro downstairs while living there, the hydro usage in question was for construction and not for normal tenancy activities.

The Tenant is seeking \$972.00 in compensation; however, the Tenant failed to provide copies of hydro bills within in the 44 pages of evidence that was provided. While I find that the Tenant has established he has suffered a loss, the Tenant has failed to establish the value of the loss.

The Landlord was paying his share of the hydro, so I find that the loss the Tenant suffered was not significant.

Under section 67 of the Act if the director finds that damage or loss has resulted from a party not complying with the Act, the regulations, or a tenancy agreement the director may determine the amount of compensation that is due.

In the absence of evidence proving the actual value of the loss, I find that is appropriate to award the Tenant \$30.00 per month for hydro costs for the months of October, November and December. I award the Tenant \$90.00 for the claim for hydro.

Pain and Suffering

Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss addresses the criteria for awarding compensation.

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- *loss of access to any part of the residential property provided under a tenancy agreement;*
- *loss of a service or facility provided under a tenancy agreement;*
- *loss of quiet enjoyment;*
- *loss of rental income that was to be received under a tenancy agreement and costs associated; and*
- *damage to a person, including both physical and mental.*

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- *A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
- *Loss or damage has resulted from this non-compliance;*
- *The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
- *The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

The Tenant is seeking compensation for pain and suffering due to constant noise and disruption from the construction and for disruption caused by the Landlord fighting with his contractors and his girlfriend.

I find that any disruption caused from construction was dealt with earlier in this decision. I find that the Tenant has not provided sufficient evidence to establish that the Landlord was fighting with his contractors and his girlfriend and that the disruption has caused pain and suffering. I find that the statements provided by a number of the contractors contradict the Tenant's suggestion that there was on-going fighting. I prefer the evidence of the Landlord that there was no ongoing fighting.

In the initial hearing on October 18, 2016, the Tenant explained that he chose compensation in the amount of \$13,233.00 to reach the cap of the maximum amount of compensation he could apply for.

The amount of the Tenants' claim appears to be based on personal whim rather than any reason or system. The Tenant has not provided any medical evidence to support or establish a claim for pain and suffering and has not provided compelling evidence that he suffered a loss and has not established the value of any loss. -

The Tenant's claim for compensation of \$13,233.00 for pain and suffering is dismissed.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenant had very little success with his application. I decline an order awarding the cost of the hearing against the Landlord.

The Tenant is granted a monetary order in the amount of \$90.00 due to the Landlord's use of hydro. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Tenant is granted a monetary order in the amount of \$90.00.

The Tenant's claims for loss of quiet enjoyment and pain and suffering are dismissed without leave to reapply.

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: February 10, 2017

Residential Tenancy Branch