



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FF, MNDC, OLC, PSF, RP

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order that the landlord make emergency repairs
- b. An order that the landlord make repairs
- c. A monetary order in the sum of \$2000
- d. An order that the landlord comply with the Act, regulation and/or the tenancy agreement
- e. An order that the landlord provide services or facilities required by law
- f. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The Tenants filed the within application on March 20, 2017. The hearing was held in the presence of both parties on April 19, 2017. However, it was adjourned as the tenant's documents had not reached the file. The hearing was adjourned to May 29, 2017. The landlord failed to attend the hearing on that date. I determined it was appropriate to adjourn the May 29, 2017 hearing as the tenant had incorrectly identified the landlord's address and it was unclear whether the landlord had been served with the Notice reconvening the hearing. The matter was adjourned to July 17, 2017.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on March 22, 2017.

At the time of the July 17, 2017 hearing the repairs had been completed and the only issue to be determined was whether the tenants are entitled to compensation and if so how much. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on August 15, 2016. The tenancy agreement provided that the tenant(s) would pay rent of \$2400 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$1300 at the start of the tenancy.

The Tenant gave the following testimony:

- The tenants rent the basement suite. KP returned from holidays on January 2, 2017 to discover a significant leak coming from the main floor rental unit. The upstairs rental unit is owned by the landlord. It was unoccupied at the time. The tenant paid rent of \$900 to JM.
- The landlord was advised on the problem on January 2, 2017. However, it was not finally repaired until January 13, 2017. A contractor attended within 2 or 3 days of January 2, 2017. However, he was not able to locate the problem. It became apparent the problem was originating from the main floor unit. However, the contractor could not gain access to the main floor rental unit.
- The room rented by KP was left in a mess. Many pieces of clothing were damaged. The dripping sound adversely affected his enjoyment of the rental unit during this time. The humidity caused fungus to grow in the rental unit.
- In addition the tenants seek compensation for a leaky faucet that existed from February 5, 2017 to March 5, 2017. The landlord was advised on February 5, 2017. The problem was re-repaired in May. The work was poor and not of professional quality.
- There were many Wifi outages.
- There was a clog in the bathroom sink when the tenant first moved in. They were able to fix the clog. The tenant could not remember when or if he contacted the landlord.
- The dishwasher broke down on January 15, 2017. The contractor attended on a number of occasions and first determined there was no problem. However, the problems kept coming back and in early May the dishwasher was replaced.
- There has been a silverfish problem that was not dealt with promptly.
- The tenant expressed frustration in communicating with the landlord. The landlord does not speak English. The person acting as an agent for the landlord has said he is not a Property Manager and acts as a translator only. The landlord is often out of town and it is difficult to pass messages to the landlord.

The translator for the landlord summarized the landlord's evidence as follows:

- They received a message from the tenant on January 2, 2017 relating to a problem with a leak in one of the bedroom.
- The technician arrived on January 4, 2017 but could not determine the cause of the problem. He returned on January 5, 2017 but no water was dripping at that time.
- On January 8, 2017 the tenant messaged the contractor and advised the ceiling was still leaking.
- On January 9, 2017 he obtained the keys for the main floor unit from the agent for the landlord and turned off the water.
- On January 11, 2017 he was advised by the tenant "it was still leaking."
- On January 13, 2017 the problem was located and the repairs were made.

- The landlord acknowledged getting a message from the tenant about a problem with the dishwasher. The contractor was contacted. He went to check on January 30, 2017 but it was working fine.
- On February 2, 2017 the tenant advised the problem continued with the dishwasher. I checked again the next day but there were no problems.
- On March 15, 2017 the tenant advised there was a problem with drainage.
- On March 16, 2017 he went to look at the dishwasher but no one was home to give the contractor access.
- In September 2016 he fixed the problem with the clog of the bathroom sink.
- He was advised on the bathtub faucet problem on February 5, 2017. However, because of heavy snow and the difficulty accessing the rental problem he was not able to fix it until early March.

Law

Section 32 of the Residential Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 28 of the Residential Tenancy Act provides 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.

Policy Guideline #6 includes the following

B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Compensation for Damage or Loss

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 RTA and section 60 of the MHPTA (see Policy Guideline 16). 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.

Analysis

All of the evidence was carefully considered. With respect to each of the Tenants' claims I find as follows:

- a. The tenants claim the sum of \$900 for the disruption to the room of KP for the period January 2, 2017 and January 13, 2017. I determined the tenants are entitled to compensation. However, the amount claimed is unreasonable and not supported by the evidence. KP paid \$900 a month to JM as his contribution to the rent. The problem was fixed in 12 days. Further, while his use and enjoyment of the room was impaired by the leak he still had some use of the room. In the circumstances I determined the tenants are entitled to \$300 for this claim.
- b. I dismissed the claim for message transcripts. That claim refers to the cost of litigation. The only jurisdiction an arbitrator has relating to costs is the cost of the filing fee.
- c. I dismissed the tenant's claim of \$500 for his time to communicate with contractors, coordinate repairs and trying to making repairs. This claim was based on 20 hours of time multiplied by \$25 being the amount of money he earns from the company he is presently working at. The tenant failed to present sufficient evidence to prove this claim. The landlord did not agree to pay the tenant for his labour.
- d. The tenant claimed the sum of \$600 for the loss of quiet enjoyment. I determined there has been inconvenience and a loss of quiet enjoyment. The dishwasher was not fully operational from January 15, 2017 to early May 2017. There was a delay in fixing a leaky faucet. I do not accept the submission of the tenants that they are entitled to compensation for the clogged bathroom sink as that was repaired promptly. The Wifi has been out on occasion. In the circumstances I determined the tenants are entitled to compensation in the sum of \$300 for this claim.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenants the sum of \$600 plus the sum of \$100 in respect of the filing fee for a total of \$700 such sum may be deducted from future rent.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

All other claims are dismissed.

This decision is final and binding on the parties.

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: July 17, 2017

Residential Tenancy Branch