



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CARLINE MANOR APTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, MNR, MNDC, FF, RP, O

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 the landlords to make repairs to the rental unit pursuant to section 33;
- a determination regarding their dispute of an additional rent increase by the landlords pursuant to section 43; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

All parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The personal landlord FT (the "landlord") represented both herself and the corporate landlord with the assistance of the property manager, CG. The tenant represented herself with the assistance of her family member.

As both parties were in attendance I confirmed that there were no issues with service. The landlord testified that she received the tenant's application for dispute resolution, the amendment to the application and all evidentiary materials. The tenant testified that she received the landlords' evidence package. Pursuant to sections 88 and 89 of the *Act*, I find that the tenant was duly served with the landlords' evidence and the landlords were duly served with the tenant's application, amendment and evidence.

At the outset of the hearing the parties testified that this tenancy had ended and an order for repairs or dispute of the rent increase is no longer being sought. The tenant withdrew the portion of her application seeking repairs to the rental unit and disputing the rent increase during the tenancy.

Issue(s) to be Decided

Is the tenant entitled to a monetary order as claimed?

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

Background and Evidence

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/or arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

This tenancy began in June, 2014 and ended on July 1, 2017. The monthly rent began at \$930.00 and was raised to \$953.50 in November, 2017. A security deposit of \$465.00 was paid at the start of the tenancy and was returned to the tenant in accordance with the *Act* at the end of the tenancy.

The rental unit is a suite in a multi-unit building. The rental unit is on the top floor of the rental building. The rental unit suffered a number of leaks from the ceiling during the tenancy. The tenant testified that the leaks caused damage to her possessions, limited her ability to enjoy the rental unit, and caused serious health issues. The tenant testified that the leaks were first noticed in December, 2015 and she alerted the landlord immediately. The tenant said that throughout the tenancy the landlords were informed of the frequent leaks but the landlords' response was inadequate and did not resolve the issue. The tenant submitted into written evidence copies of numerous text message and email conversations with the property manager regarding the leaks.

The tenant claims the amount of \$15,664.50 for the following items:

Item	Amount
Registered Mail to Landlord	\$24.65
Photographs of Rental Unit	\$76.69
Loss of Income	\$500.00
Running Shoe Replacement	\$195.00
Laundry Costs	\$50.00
Cleaning Supplies Costs	\$40.00
Recovery of Rent (6 months x \$930.00)	\$5,580.00
Recovery of Rental Increase (7 months x 23.50)	\$164.50
Moving Expenses	\$1,500.00

Registered Mail Service to Landlord	\$13.66
Mold Assessment Services	\$420.00
Aggravated Damages	\$5,000.00
Expenses Paid by Tenant's Family	\$2,100.00
TOTAL	\$15,664.50

The tenant testified that the leaks were a consistent occurrence during the tenancy and it was not localized to one location within the rental unit. The tenant testified that leaks began in one area but as the roof of the building was not properly maintained, multiple leaks sprung up and the whole rental unit was affected. The tenant gave evidence of leaks occurring in the hallways, closets, bedroom and other spots on the ceiling. The tenant testified that the leaks would occur whenever it was raining, which was frequently during the winter months. The tenant testified that because of the water damage to her possessions she needed to do several extra loads of laundry regularly and clean the rental unit beyond what she would normally expect to do. The tenant testified that the water damage caused her athletic running shoes stored in the closet to be damaged beyond repair, and that her mattress needed to be replaced. The parties confirmed that the tenant's mattress was replaced and the landlords compensated the tenant the amount of \$1,200.00 for the cost of the mattress. The tenant submitted into written evidence several photographs of the rental unit showing the condition of the suite and the water damage.

The tenant submitted into written evidence copies of various correspondence with the landlords throughout the tenancy advising the landlords of the leaks. The tenant said that despite the repeated requests to address the issue the landlords' responses were inadequate at best and mostly dismissive. The tenant said that the leaks were first discovered in December, 2015 and then recurred during November, 2016 continuing throughout that winter. The tenant gave evidence that she arranged for a restoration company to inspect the roof and provide a quote to the landlord but the landlord refused the services. The tenant testified that because of the severity and persistence of the leaks she was often unable to reside in the rental unit and had to stay with friends or family.

The tenant said that because of the constant leaks and moisture in the rental unit, mold began to grow and this had a detrimental effect on her health. The tenant submitted into written evidence a mold assessment report she had commissioned by a professional environmental assessment company on June 13, 2017. The report found that there was an elevated level of certain mold types, including *Penicillium/Aspergillus* at a rate 21 times greater than the baseline, in the air samples inside the rental unit.

The report concludes that based on the elevated presence of spores within the rental unit there was a significant mold source in the unit. While the report does not make any conclusions as to the reasons for the elevated presence of mold in the rental unit it does state that “mold grows indoors when moisture levels become elevated”. Possible reasons given for an elevated moisture levels include “leaks, floods, condensation and building envelope failures”. The report states that the rental unit requires professional restoration and mold abatement.

The tenant submitted into written evidence a letter from her family physician who states that “there is sufficient evidence to link indoor exposure to mold with upper respiratory tract symptoms, cough and wheeze”. The family doctor briefly describes the tenant as having no pre-existing conditions and as someone who has “never suffered from allergies or sinusitis”. The doctor describes the tenant’s symptoms and gives the opinion that the tenant “developed persistent upper respiratory tract symptoms, swollen eyelids, headache and fatigue due to prolonged exposure to mold in her apartment”.

The tenant testified that the leaks, the mold growth, and the stresses of dealing with the landlords have had a considerable negative impact on her life. The tenant said that she has been forced to spend much of her time cleaning her possessions of the water damage. She has been unable to work at her place of employment, to the level that she had prior to the leaks. She suffered respiratory issues, nosebleeds and headaches and other physical ailments. The tenant provided evidence about the stress she felt in dealing with her situation. She described the frustration she felt dealing with the landlords. The tenant said that she remained hopeful that they would perform the necessary repairs to the rental unit in due course but they never made arrangements even as the weather turned drier. The tenant said she was unable to enjoy the rental unit and ultimately ended the tenancy.

The landlord did not dispute the tenant’s evidence that the rental unit suffered multiple leaks throughout the tenancy. The landlord testified that when they were made aware of the leaks in the rental unit they took all reasonable efforts to correct the situation. The landlord said that they either performed emergency repairs themselves or contacted professional maintenance companies to attend. The landlord said that they were advised by a professional roofing company in December, 2016 that the roof needed to be repaired but repairs could not be scheduled until the weather changed. The landlord said that they had a good relationship with a specific roofing company and they did not consider other options. The landlord testified that the tenant was informed in January, 2017, that no repairs would be made until the rain abated and that the

tenant was free to end the tenancy if she desired. The landlord testified that repairs were commenced and completed sometime in June, 2017.

The landlord said that the tenant did not properly mitigate her losses by removing her personal items from the leaking areas in a timely manner. The property manager testified of one instance where she physically removed the tenant's mattress from the leaks after attending in the rental unit.

Analysis

Pursuant to section 32(1) of the Act, a landlord is required to maintain residential property in a state of repair that complies with health, safety and housing standards so that it is suitable for occupation by a tenant.

I find that on its face, a rental unit that does not provide protection from the elements by leaking regularly whenever there is precipitation does not meet housing standards to be suitable for occupation. I accept the evidence of the parties that, after taking some initial measures to address the leaks, the landlord advised the tenant that repairs would not be commenced until an unspecified date when the weather accommodated. I accept the landlord's testimony that the tenant was advised that she could vacate the rental unit if she wished.

I find that the landlords had a statutory duty to maintain the rental unit and perform repairs when the leaks were reported. If the rental unit was no longer suitable for habitation, AND the reason the tenancy agreement could no longer be performed was through no fault of either party, this tenancy would have been frustrated. However, the landlords continued to accept rent from the tenant. By accepting rent and keeping the tenancy going, the landlords retained their duty to provide a reasonably maintained rental unit going. A landlord cannot accept the benefits of a tenancy agreement and charge rent without also meeting their duty. I find that the landlords did not meet their duty and specifically and purposefully chose to take no action. I find that the landlords were aware of the condition of the rental unit and the repairs that were required. I find the fact that the landlords issued payment in the amount of \$1,200.00 to the tenant for the cost of replacing a damaged mattress to be instructive. I find that by issuing the payment the landlords acknowledged that there was an issue and it was substantive enough to warrant a significant payment to the tenant for her loss. I do not find that the one payment absolved the landlords from taking further steps to deal with the issue. I do not find it reasonable that the landlords did not arrange for the roofer to make repairs for close to six months. Even if full scale repairs were not possible due to the weather conditions, the landlords could have taken some steps to maintain the rental unit in a

reasonably habitable condition. The landlords did not act in a timely manner to make reasonable repairs. By advising the tenant that they would be making no repairs and that the tenant could end the tenancy I find that the landlords expressed their intention to not meet their duty under statute or common law.

Section 67 of the *Act* allows me to issue a monetary award for damage or loss. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement. In accordance with section 7(2) of the *Act*, a claimant must do whatever is reasonable to minimize the damage or loss.

I find that the landlords have breached the *Act* by failing to take reasonable action in repairing the leaks to the rental unit. I find that the tenant has suffered damage and loss as a result of the landlords' willful neglect. I accept the tenant's evidence that her running shoes were damaged beyond repair, she incurred additional costs for laundering her clothes, and she needed to purchase cleaning supplies. While the tenant did not submit written evidence in support of her loss in the form of receipts or invoices, the tenant provided cogent, convincing and undisputed testimony about the costs incurred. I accept that the tenant suffered a loss of \$195.00 for the cost of replacing her running shoes, \$50.00 for laundry she otherwise would not have had to do, and \$40.00 for cleaning expenses. I issue a monetary award for these items.

I find that expenses such as the cost of registered mail for serving the landlords with the application and evidentiary materials and preparing evidence such as photographs are not costs that were incurred due to the direct violation of the landlords. Similarly, I find that the cost of commissioning a professional inspection of the rental unit to be a cost associated with the tenant preparing her application and not a loss recoverable under the *Act*. Consequently, I dismiss the portion of the tenant's application for costs relating to preparing her application for dispute resolution.

I find that there is insufficient evidence to show that there has been a loss of income that is directly attributable to the landlords' violation of the *Act*, regulations or tenancy agreement. The tenant submitted a letter from her employer which states generally that the tenant, "suffered loss of work wages" but there is no additional information. I find

there is insufficient evidence to show what income the tenant would normally have received and the loss suffered. I find that in the absence of sufficient evidence to show that there was a loss and that it arises as a direct result of the landlords' violation, I must dismiss this portion of the tenant's claim.

I find that moving expenses are not a loss that is recoverable under the *Act*, as they are not expenses that arose as a direct result of the landlords' breach. The evidence of the parties is that the tenancy continued for a period of 7 months while the leaks and water damage were an ongoing issue. I find there is insufficient evidence to conclude that the cost of moving resulted solely or primarily due to the landlords' breach when the tenancy had continued for over half a year despite the breach. Consequently, I dismiss this portion of the tenant's claim.

I find that there is insufficient evidence in support of the tenant's claim for expenses borne by her family member. I find that there is little detail about the nature of the expenses incurred or how they relate to the tenancy. Claims for damage and loss must arise as a direct result of a violation of the *Act*, regulations and tenancy agreement. While a violation may have far reaching consequences, and take a toll on the tenant and their support system, not all of the effects are recoverable under the *Act*. I find that there is insufficient evidence to show that the losses incurred by the tenant's family are a direct result of the violation and consequently, dismiss this portion of the tenant's claim.

The tenant makes a claim for a monetary award for loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

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;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

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 a 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 covenant of 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.

The section further provides that:

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 ...

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.* [Emphasis added]

The parties testified that the rental unit was first reported leaking in December, 2015. The landlord testified that appropriate action was taken during this time. The parties gave evidence that the rental unit was reported leaking again in November, 2016. I accept the parties' evidence that the landlords made cursory attempts to fix the issue but full repairs to the roof did not commence until June, 2017. The tenant provided evidence that the leaks to the rental unit occurred throughout the unit in various areas and had a major effect on her ability to enjoy and live in the rental unit. The tenant testified that on several occasions she would need to vacate the rental unit and stay with friends or family because of the leaks. The tenant also provided evidence that she would be unable to use areas of the rental unit due to the water damage.

The tenant suggests that an amount of \$5,744.50, the equivalent of the original rent rate of \$930.00 for six months for a total of \$5,580.00 and the amount of the rent increase of \$23.50 for 7 months for a total of \$164.50, is appropriate in the circumstances.

While I find that the leaks and water damage have profoundly affected the tenant's ability to enjoy the full rental unit, there is undisputed evidence that the tenant was able to continue to reside in the rental unit for the most part and only needed to vacate for a portion of the time. I find that the rental unit was affected by the leaks to such an extent that the tenant was unable to reside in the unit full time. I find that the tenant's daily routine was affected by the water damage and the tenant was unable to utilize the full

unit. I accept the parties' evidence that the tenant was already compensated for the loss of her mattress by the landlords. Under the circumstances, I am issuing a monetary award which reflects that the tenant suffered a significant loss of value in her tenancy agreement beyond that for which she has already been compensated. I find that an appropriate amount of damages for the tenant's loss in the value of her tenancy is \$4,000.00.

I base the amount of damages on the period of loss from November, 2016 to the end of the tenancy on July 1, 2017, a period of approximately 7 months. I find that leaks and water damage were a recurring issue throughout that time. I find that leaks are a serious breach of a landlord's duty to maintain and provide a rental unit in reasonable and habitable condition. I find, based on the evidence of the parties that the water damage was left unaddressed by the landlords for the most part. I find that the tenant was unable to use much of the rental unit because of the water damage. I accept the evidence that the bedroom suffered significant damage necessitating the replacement of the tenant's mattress. I find that water damage that necessitates an amount of \$1,200.00 being spent for the replacement of a mattress to be more than just cosmetic or minor. I accept the evidence that the tenant spent most weekends and several weekdays each month residing with friends and family when the leaks in the rental unit became too much to bear. I accept the evidence that the tenant was unable to reside in the rental unit for most of the month of June, 2017. I find, based on the totality of the evidence, that the leaks and the landlords' failure to make proper repairs in a timely fashion had the effect of reducing the value of the tenancy for the tenant by approximately 60%. Therefore, I find that a monetary award of \$4,000.00 which is approximately equivalent to 60% of the full rent of \$953.50 for a period of 7 months to be appropriate in these circumstances. This monetary award includes the tenant's claim for both the original rent and the rent increase.

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. However, unlike punitive damages, the conduct of the wrongdoer need not contain an element of wilfulness or recklessness in order for an award of aggravated damages to be made. All that is necessary is that the wrongdoer's conduct was

highhanded. The damage must also be reasonably foreseeable that the breach or negligence would cause the distress claimed.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought. The damage award is for aggravation of the injury by the wrongdoer's highhanded conduct.

An arbitrator does not have the authority to award punitive damages, to punish the respondent.

The tenant seeks aggravated damages for the stress, anxiety and health issues caused by the landlords.

I am satisfied that the tenant suffered a great deal of disruption during this tenancy with absolutely no benefit. The evidence shows that the living conditions, as evidenced by the photographs and the testimony of the parties, were negatively impacted by the leaks and water damage. I accept the landlords' undisputed evidence that the landlord informed the tenant no repairs would be done until the weather permitted. The landlords were aware of the leaks, the water damage and the impact that this had on the tenant but chose to neglect it and failed to make adequate repairs. Even if the weather conditions prevented full repairs I find that the landlords could have taken other reasonable steps to minimize the water damage. The landlords could have retained the services of another roofing company instead of waiting for the availability of the one they preferred; they could have made reasonable temporary efforts to prevent the leaks. The landlords could have found that this tenancy was frustrated as they were unable to provide a rental unit in a habitable state. The landlords chose to take no action and placed the onus on the tenant to end this tenancy.

The correspondences between the tenant and the landlords submitted into evidence by the parties demonstrate, in both their content and tone, that the landlords were dismissive of the tenant's concerns and characterized her as seeking to profit from the rental unit deficiencies. Overall, I find that the landlords acted in a highhanded and dismissive manner in regards to the tenant's suffering. The evidence is that during the last 7 months of the tenancy, the tenant suffered a great deal due to the landlords' negligent abandonment of their duty of care. The landlords made minimal efforts to rectify the situation or to minimize the disruptions to the tenant.

I find that there has been an aggravation of the tenant's losses in addition to the loss of value of the tenancy awarded above. I find that the tenant has suffered stress, a decline of health, significant discomfort and mental distress not compensated under the other damage claims. I accept the tenant's evidence that she continues to suffer health issues as of the date of the hearing. I accept the evidence that the tenancy was fraught with stress from the persistent leaks and water damage, the conduct of the landlords and the inability to be informed of when proper repairs would be made. I find the timing of the repairs occurring in the last month of the tenancy after the tenant has given notice to vacate to be informative.

I find that there has been a significant negative impact on the tenant's quality of life that has not been compensated for in the other awards. I find that the tenant's damages arise from the conduct of the landlords which transcend simple negligence and amount to a highhanded and reckless disregard for the welfare of the tenant and the duty to provide housing suitable for occupation. I find the landlords did not schedule repairs in a timely manner, leaving it to the weather conditions and the availability of a single roofing company. I find that the landlords disregarded the tenant's complaints and issued correspondences characterizing the tenant as exploitative and opportunistic. I accept the tenant's evidence that there has been mental distress and anguish as a result of the landlords' conduct. I accept the evidence that the landlord provided the tenant with the option of ending the tenancy in January, 2017 and the tenant chose to stay expecting repairs would be completed. I find that given the reality of the rental property market ending a tenancy is not a measure to be taken lightly. I accept the evidence of the parties that the landlords made promises to the tenant that the repairs would be conducted when the weather allowed and the tenant continued the tenancy expecting the repairs in a reasonable timeframe. .

In making an award I am reminded that I have no authority to award punitive damages. Aggravated damages may be awarded where the conduct of the respondent justifies such an award but the award must be compensatory, not punitive, although the damages should take account of the claimant's intangible injuries such as distress and suffering. In this application the tenant seeks damages totaling \$5,000.00.

I find that an award in the amount suggested by the tenant would cross the threshold from compensatory to punitive. I note further that the burden of proving loss and damage rests with the applicant and there is a duty upon the claimant to act reasonably to mitigate or minimize the loss and there has been little evidence of mitigation. Being guided by these principles I find that an appropriate amount for aggravated damages to be \$2,000.00.

As the tenant's application was largely successful I find that the tenant is entitled to recover the \$100.00 filing fee for this application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$6,885.00 under the following terms:

Item	Amount
Running Shoe Replacement	\$195.00
Laundry Costs for Cleaning	\$50.00
Cleaning Supplies Costs	\$40.00
Rent Reduction	\$4,000.00
Aggravated Damages	\$2,000.00
Filing Fees	\$100.00
TOTAL	\$6,385.00

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: August 10, 2017

Residential Tenancy Branch