



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DANNY'S INN LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, RP

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 requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlord to make repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The corporate landlord was represented by its agent TF (the "landlord"). Both parties were assisted by legal counsel.

As both parties were in attendance I confirmed that there were no issues with service. The landlord confirmed receipt of the tenant's application and evidentiary materials. The tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the tenant's application and their respective evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

Should the landlord be ordered to make repairs to the rental unit?

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 periodic tenancy began in May, 2013. The rental unit is a single unit in a multi-unit building with commercial businesses adjoining. The current monthly rent is \$575.00 payable on the first of each month. A security deposit of \$375.00 was paid at the start of the tenancy and is still held by the landlord. There is no written tenancy agreement.

The tenant claims the amount of \$3,956.00 for the following items:

Item	Amount
Cable Package (\$22.00 x 48 months)	\$1,056.00
Loss of Reasonable Enjoyment (\$50.00 x 48 months)	\$2,400.00
Aggravated Damages for Harassment	\$500.00
TOTAL	\$3,956.00

The storefront window on the front of the building has an illustration and word balloon which says: "Wow! Bath and shower color T.V. and cable in all rooms". The tenant testified that he chose to reside in the rental building based on the amenities advertised in the illustration.

The tenant testified that there was no television in the rental unit when he took possession. The tenant said that he installed a television himself, and got an account with the cable service provider in 2015. After a period of time the tenant said that his cable service was cut off. The tenant said that the landlord failed to provide the services advertised and subsequently terminated the services without notice or a commensurate reduction in the rent.

The tenant testified that the rental unit requires repairs and maintenance throughout including the windows, the bathtub, bathroom walls, faucets and doors. The tenant provided testimony about the deficiencies and submitted into written evidence photographs of the condition of the rental unit. The tenant testified that as a result of the mold in the rental unit he has suffered negative health.

The tenant said that there have been numerous cockroaches and pests in the rental unit and as a result he has suffered losses, such as having to throw out food and possessions. The tenant provided evidence that the repeated appearance of pests in the rental unit has had a detrimental effect on his ability to enjoy the tenancy.

The tenant testified that he has suffered harassment and mistreatment by staff, other residents, and neighbors. The tenant said that the poor treatment has been ongoing and believes it to be racially motivated.

The landlord testified that she could not recall if a television was available in the rental unit at the start of the tenancy. The landlord said that customarily tenants bring their own televisions. The landlord said that cable is available in all rooms but the tenant ordered and did not pay for pay-per-view programs, and that is why the tenant's cable was disconnected by the cable company.

The landlord said that the rental unit was upgraded prior to the tenancy and was in good condition when the tenant moved in. The landlord said that repair and maintenance work has been performed in response to the tenant's requests. The landlord said that the tenant has, on occasions, refused to allow access to the rental unit preventing some repairs from being completed. The landlord testified that the rental building is run informally with notice of the landlord accessing individual units being given orally, or through general postings in a common area. Since the tenant has complained about the informality, the landlord has begun to issue written notice to the tenant when they require access to the rental unit.

The landlord submitted into written evidence invoices and work requests from a pest control company retained to attend at the rental building. The landlord testified that there is regular inspection and treatment for pest infestation.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find there is insufficient evidence in support of the tenant's claim for loss for the cable package. In the absence of a written tenancy agreement I must first determine if televisions and cable are a material term of the tenancy. The tenant says that the window decoration constitutes a valid contract whereby the landlord agrees to provide the amenities listed in the word balloon. I do not find this to be the case. I find that the content of the word balloon on the window to be a mere puff and that there is no intention to create a binding agreement. There is no call to action in the text of the word balloon, no information that the performance of an action would be met with the items listed. I find that the window illustration to be insufficient to constitute an offer that is open to acceptance. I do not find that there is sufficient evidence that the landlord promised or represented that the tenant would be provided with either a television or cable as a term of the tenancy agreement. I find that there is insufficient evidence to conclude that a cable package is a term of the tenancy agreement between the parties and that its interruption gives rise to a claim for damages. Consequently, I dismiss this portion of the tenant's claim.

Furthermore, even if the provision of cable is a term of the tenancy agreement I find that there is insufficient evidence to show that the landlord has terminated the service in violation of section 27 of the *Act*. I accept the landlord's evidence that they made inquiries about the service and were informed by the cable provider that service was stopped as the tenant failed to pay for pay-per-view programs he had ordered. I find that there is insufficient evidence that the interruption of the cable service was caused by the landlord and not due to the tenant's failure to pay the third party provider.

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.*

The onus is on the party making the claim to show on a balance of probabilities that there has been a loss of quiet enjoyment as a result of the action or negligence of the landlords.

The parties have testified that the rental unit requires some ongoing repairs and maintenance work. The tenant has said that the issues have been reported to the landlord but they have not been completed as of the date of the hearing. The landlord testified that they have performed some repairs to the issues raised by the tenant and other repairs will be conducted provided the tenant allows the workers access to the suite. The landlord submitted into written evidence invoices and work orders in support of their position that work has been done in the past. The tenant provided photographs of the rental unit in support of their position that work continues to be required.

The landlord has provided undisputed testimony that the rental building is operated informally and that written notice is not always given to tenants prior to the landlord entering a rental unit. The landlord said that notice is often given orally, or by a general posting in the common area. The tenant testified that he has discovered the landlord or

the landlord's agents have accessed the rental unit several times during the tenancy and this has agitated him.

I accept the tenant's evidence that there are some repairs that remain outstanding in the rental unit. I accept the landlord's evidence that repairs have been hampered by the tenant's refusal to allow the landlord access to the rental unit. The tenant did not provide any evidence that he has been unable to occupy or use the rental unit because of the deficiencies. The tenant testified that the mould in the rental unit has caused health issues but little documentary evidence was submitted in support of the tenant's position.

The tenant suggests an amount of \$2,400.00 for the loss of quiet enjoyment is appropriate. I find there is insufficient evidence to support a claim in that full amount. While I find that there has been some impact on the tenant's ability to fully enjoy the rental unit, I find that the delay in repairs is not solely attributable to the landlord. I accept the landlord's evidence that the repairs and maintenance work has been delayed due to the tenant's actions. I accept the tenant's evidence that the bathroom requires repairs and that the rental unit continues to experience cockroaches and other pests. I accept the tenant's evidence that the ongoing issues in the rental unit have caused the tenant distress and have had a negative impact on his life. Furthermore, there is undisputed evidence from the parties that the landlord has entered the rental unit on multiple occasions to perform repairs or maintenance work without providing written notice to the tenant pursuant to the *Act*. I accept the tenant's evidence that these intrusions have been disturbing to him. Under the circumstances, I find that a monetary award of \$575.00, the equivalent of one month's rent for the tenancy to be appropriate.

The tenant claims for 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.

In the case at hand I find that there is insufficient evidence that the landlord's conduct could be characterized as highhanded so as to give rise to an aggravated damage claim. The tenant gave evidence of altercations with other residents or neighbors, but I find that to be irrelevant to the landlord's conduct. I find there to be insufficient evidence that the landlord has acted in a manner that has prolonged or exacerbated the tenant's damages. Accordingly, I dismiss this portion of the tenant's claim.

I accept the landlord's undisputed testimony that the rental building is operated informally and that the landlord gave oral notice to tenants instead of written notice, when entering rental units. I accept the landlord's evidence that they have begun issuing written notices at the tenant's request. I order that the landlord continue to comply with the requirements of the Act, specifically section 29, and refrain from entering the tenant's rental unit without the appropriate written notice.

I accept the evidence of the parties that there remain specific repairs that are outstanding in the rental unit. I order that the landlord complete the outstanding repairs requested by the tenant:

- The bath tub faucet and shower head;
- The hole in the wall;
- Broken window; and
- Closet door.

Conclusion

I issue a monetary award in the amount of \$575.00 to the tenant. As this tenancy is continuing, I allow the tenant to recover this amount by reducing his monthly rent by that amount on his next monthly rental payment to the landlord. In the event that this is not feasible, I issue a monetary Order in the tenant's favour in the amount of \$575.00. 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.

The landlord is ordered to comply with the requirements of the *Act* and provide written notice to the tenant pursuant to section 29 prior to entering the rental unit.

The landlord is ordered to complete the outstanding repairs to the rental unit.

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 24, 2017

Residential Tenancy Branch