Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EMV HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, ERP, RR

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 landlord to make emergency repairs to the rental unit pursuant to section 33; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

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.

As the landlords confirmed that the tenant handed them a copy of his dispute resolution hearing package on November 16, 2017, I find that this package was duly served to the landlords in accordance with section 89 of the *Act*. As the parties also agreed that they received written, photographic and digital evidence from one another in sufficient time to prepare for this hearing, I find that the parties were duly served with this evidence in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses and damages arising out of this tenancy? Is the tenant entitled to a rent reduction for repairs, services or facilities agreed upon but not provided by the landlord? Are the landlords required to make emergency repairs for health or safety reasons that have been requested by the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

This periodic tenancy for a suite in an apartment building began on June 1, 2017. Monthly rent is set at $1,275.00, payable in advance on the first of each month. Landlord EMVH (the landlord) continues to hold the tenant's $625.00 security deposit paid on September 13, 2016.

The tenant's application for a monetary award of $5,575.00 included the following items:

Item	**Amount**
Damage to a Bronze Statue	$600.00
Damage to Couch	3,000.00
Damage to a Victorian Antique Settee	1,500.00
Reduction in Rent due to Rodent Infestation	475.00
Total Monetary Award Requested	**$5,575.00**

At the hearing and in his written and photographic evidence, the tenant identified two main areas of concern leading to his application for the above-noted monetary award. The tenant and the landlords also provided an array of other evidence, involving disputes about noisy neighbours, and their interaction, some of which has occurred after the tenant applied for dispute resolution. As these additional issues have little bearing on the tenant's application for the above monetary award, I have not included them in my decision as I advised the parties that these issues were not part of the tenant's original application, nor do I consider that they have any bearing on the monetary claim the tenant submitted.

Both parties agreed that on September 21, 2017, a worker attended the tenant's rental unit to address concerns that the tenant had raised about his heat and the thermostat in his rental unit. Although 24 hours written notice was not provided, both parties agreed that the tenant allowed the landlord's heating contractor to enter the rental unit because he was in the building when the tenant first contacted the building manager to request assistance.

Shortly after the contractor began his work, he knocked over a treasured limited edition bronze frog statue the tenant had inherited from his deceased grandfather. The tenant

entered undisputed evidence that this occurred as the tenant was asking the contractor to hold off on working on the thermostat until they cleared the area underneath the thermostat of the tenant's possessions, including the bronze frog statue. When the frog statue struck the floor, the tenant immediately noticed bends to the statue and "chips" to the glazing. When he reported this to Landlord CS, she agreed to explore options for repairing the statue, which led to her identification of a company in California that could repair the statue. The tenant became reluctant to send the statue to this company as his research raised questions about the service provided by this firm. The tenant submitted undisputed evidence that he cannot find any Canadian company capable or willing to undertake the repairs to the toes of the frog statue or the bronze which has been chipped off of the surface of the statue.

Landlord CS confirmed that the toes were slightly raised from the photos she has viewed of other examples of this limited edition statue. Although she could not be certain, she testified that the damage to the bronze plating of the statue appears to have increased since the tenant first brought the statue to her shortly after the accident of September 21, 2017. The landlords also entered written evidence from the heating contractor who attended the tenant's rental unit on September 21. That contractor confirmed that he may have knocked over the statue; however, he was somewhat suspicious as to the speed whereby the tenant was able to identify the damage to the statue. The heating contractor appears to have been suggesting that the statue may have already been damaged prior to the September 21 accident. The tenant asserted that the damage to the statue occurred solely as a result of the lack of care taken by the landlord's heating contractor on September 21.

The tenant produced a series of estimates of auction prices for the limited edition frog statue, settling on the $600.00 figure included as part of his claim for a monetary award.

The landlord's representatives and counsel did not dispute the estimated repair value of the statue. The principal defence raised by the landlord's counsel and the landlord's general manager was that section 42 of the tenant's Residential Tenancy Agreement (the Agreement) required the tenant to secure tenant's insurance. The tenant confirmed that he had not entered into a tenant's insurance policy. The landlord's general manager drew special attention to the following portion of section 42, which reads in part as follows:

> *…The tenant agrees to carry sufficient insurance to cover his property against loss or damage for any cause and for third party liability. The tenant agrees that the landlord will not be responsible for any loss or damage to the tenant's*

> *property. The tenant will be responsible for any claim, expense or damage resulting from the tenant's failure to comply with any term of this Agreement…*

Legal counsel for the landlord maintained that the tenant's failure to secure tenant's insurance and his signature of the above- noted section 42 absolved the landlord of any responsibility for the damage to the tenant's frog statue on September 21 by the heating contractor.

The tenant entered evidence that he has arthritis and auto-immune diseases which renders it very difficult and unhealthy for him to live in an environment that is not clean and sanitary. The tenant considers requests to handle dead mice and attend to rodent remediation tasks ill-advised given his multiple health issues. In his written evidence and in his sworn testimony, the tenant took issue with what he considered to be a substandard attempt by the landlord to address his concerns about the ongoing mice infestation in his rental unit and in his rental building.

The tenant's claim for the damage to his sofa and antique settee relied on his assertion that the landlords bear responsibility for damage to these items from mice that have been allowed to reside in this rental building. He provided a series of photographs, which allege that mice have caused significant damage to the back and bottom of his couch and have scratched the legs of this couch, purchased from a large department store at a cost of $3,000.00 six years ago. He cited similar damage to the legs of his antique Victorian settee, which he estimated to be valued at between $1,500.00 to $3,000.00 on various popular websites. He provided photographs of the settee and copies of advertisements to demonstrate the worth of an undamaged settee on these websites. He gave undisputed evidence that the settee cannot be repaired. In addition to the monetary award the tenant was seeking, he also sought a personal and written apology from the landlord's staff and a representative of the holding company that owns this rental building.

At pages 3 and 4 of a statement the tenant entered into written evidence, he stated that he first noticed mice damage in his rental unit in June 2017. However, in his written statement and his sworn testimony, he stated that he did not notify the landlord of this problem until November 5, 2017, when he saw a mouse in the rental unit. By then, his written statement indicated that there had been "a significant amount of damage" to these items.

The landlords presented undisputed written evidence and sworn testimony that the landlord has retained a large licensed pest control company to look after pest control in

this building for many years. Landlord CS gave undisputed sworn testimony that the pest control company visits the building every month, checking every level of the building as well as the basement. She said that the pest control company sets traps on these visits, places poison in locations accessible only to pests, and ensures that there are no visible entry points for rodents to the building and the various floors. She said that tenants are generally very willing to use mouse traps provided by the landlord and remove the dead mice caught in these traps.

Landlord CS confirmed that the landlords first received a complaint from the tenant about mice on November 5. As she was away on holidays at that time, her husband attended the following day, giving the tenant mouse traps. When the tenant called to advise that a mouse had been captured in one of the traps and his health concerns made it unwise for him to attempt to remove it, the landlord had the pest control company attend the rental unit on November 8. The pest control company removed the dead mouse from the rental unit on that day.

Since the tenant is still concerned about mice entering his rental unit, the landlord's representatives agreed to contact their pest control company and have them inspect the rental unit again within a week of the hearing to ensure that all reasonable measures are being taken to block mice from entering the tenant's rental unit.

The tenant requested that his monthly rent be reduced by as much as $475.00 per month for as long as he remains troubled by the mice infestation that is causing him concern. At the hearing, the tenant asked that a suitable rent reduction be applied to prompt the landlord to address the rodent problem in his building.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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. In this case, the onus is on the tenant to prove on the balance of probabilities that the landlords are responsible for the loss claimed.

Analysis – Tenant's Claim for Reimbursement for Damage to Frog Statue

I will first address the tenant's claim for the damage to the limited edition frog statue that the tenant claims occurred when the landlord's contractor knocked that statue from its perch on September 21.

I have given the landlords' claims that section 42 of the tenant's Residential Tenancy Agreement absolves the landlord from liability for the damage to the statue careful consideration. While I would agree that the Agreement required the tenant to take out tenant's insurance, the type of damage that occurred on September 21, occurred as a result of negligence, unintentional as it might have been, on the part of the contractor retained by the landlord. The tenant did not secure the services of the contractor. Rather, the heating contractor only attended the tenant's rental unit to perform services on behalf of the landlord. As there was no contractual relationship between the tenant and the heating contractor, the tenant's only recourse for damage that occurred as a result of any lack of care or negligence on behalf of the heating contractor was to launch a claim with the landlord, the only party with whom the tenant has a contractual arrangement and upon whose authorization the heating contractor was allowed to access the rental unit to undertake the necessary repairs. Under these circumstances, I find that the landlord is responsible for damage to the tenant's frog statue.

Dropping a somewhat delicate bronze statue on the floor may very well cause significant damage to that statue, as is evident from the photographic evidence supplied by the tenant. I find insufficient substance to the evidence provided by Landlord CS and the written statement from the heating contractor in which they both questioned the extent to which the statue was damaged solely in the accident of September 21, 2017.

Although Landlord CS clearly attempted to locate a company able to repair the statue, the tenant has submitted undisputed evidence regarding his reasons for declining to forward his statue to that company to have these repairs undertaken. The tenant's claim that there is no company available in Canada that can perform these repairs was not disputed by the landlords. While there is no doubt sentimental value to a gift left to the tenant by his deceased grandfather, the tenant has supplied estimates from on-line advertisers as to the replacement value of this limited edition frog statue. As direct replacements can be obtained from these sources, I accept the tenant's undisputed evidence as to the value of statue on the open market. For these reasons, I allow the tenant's claim for a monetary award of $600.00 to replace the existing frog statue.

As the tenant is receiving a $600.00 award to enable him to obtain an identical undamaged frog statue from the same sculptor, I order him to provide the landlord with the existing frog statue once he receives the compensation from the landlord outlined above. This would enable the landlord to take whatever measures are deemed appropriate to either repair the statue or use it in support of any action the landlord may choose to initiate with respect to a future insurance claim.

Analysis – Tenant's Claim for Reimbursement of Damage to Couch and Settee and for a Reduction in Rent

Section 32(1) of the *Act* outlines the landlord's responsibility to "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 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

While there has been some damage to the tenant's couch and settee, I find that the tenant has a duty under section 7(2) of the *Act* to mitigate the landlord's exposure to the tenant's losses, in this case the damage to the couch and settee. Rather than notifying the landlord as soon as he became aware of mice in his rental unit so that the landlord could take effective action through the pest control company to reduce any further damage and loss, the tenant delayed taking this action for over four months. By November 5, 2017, when the tenant finally saw a mouse in his rental unit, by his own admission, there had been "significant damage" to both the couch and the settee.

I find merit to the observation made by the landlord's counsel that a six year old couch purchased from a department store would not have the same value as it had when it was first purchased. The landlord's counsel also raised questions as to the variables in assessing the condition of the antique settee, which may or may not have been in the same condition of those presented in the tenant's written and photographic evidence.

Although the tenant was clearly hoping for a different type of assistance from the landlord, and particularly Landlord CS's husband, when he first raised the issue with

him, the landlords did act quickly and even had its pest control company make a visit to the rental unit outside the normal monthly schedule on November 8, 2017.

There is undisputed sworn testimony supported by extensive written evidence from the landlord to confirm that the landlords do have a regular pest control program in place at this rental building, which leads to monthly inspections. While this program cannot guarantee that mice will never enter this rental building, I find that the landlords have complied with the requirements of section 32(1) of the *Act*, and are taking adequate measures to try to address pest control issues to the extent that is reasonable within this rental building. For these reasons, I dismiss the tenant's application for a monetary award for damage to his six-year old couch and antique settee without leave to reapply.

As I find that the landlord has been taking adequate measures to address the tenant's concerns, I also dismiss the tenant's claim for a reduction in his rent.

As discussed at the hearing, I order the landlords to contact the pest control company that services this building and have that company attend the tenant's rental unit by December 21, 2017, to ensure that everything reasonable is being done to prevent mice from entering the tenant's rental unit and his floor of this rental building.

Conclusion

I issue a monetary award of $600.00 in the tenant's favour, which allows the tenant to replace the frog statue damaged on September 21, 2017. To implement this award, I allow the tenant to reduce his monthly rental payment on a one-time basis by $600.00. If for some reason, this is unfeasible, I issue a monetary Order in the amount of $600.00 in the tenant's favour, which may be used as an alternative to the one-time rent reduction outlined above.

The tenant is provided with the monetary Order in the above term against Landlord EMVH and Landlord EMVH must be served with this Order as soon as possible. Should EMVH fail to comply with these Orders, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the remainder of the tenant's application without leave to reapply.

I also order the tenant to provide the existing damaged frog statue to Landlord EMVH at the same time as the tenant receives the $600.00 compensation for the damage to the

statue outlined above. If this does not occur, Landlord EMVH is at liberty to apply for the return of the $600.00 compensation outlined in this decision.

I order the landlords to contact the pest control company that services this building and have that company attend the tenant's rental unit by December 21, 2017, to ensure that everything reasonable is being done to prevent mice from entering the tenant's rental unit and his floor of the rental building.

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: December 18, 2017

Residential Tenancy Branch