Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") under the *Residential Tenancy Act ("Act")* for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant and an agent for the landlord ("agent")] attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to present their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence. Therefore, I find the parties were sufficiently served under the *Act.*

Preliminary and Procedural Matter

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator. The parties were advised that the decision and any applicable orders would be emailed to both parties.

Issues to be Decided

- Is the tenant entitled to a monetary order under the *Act,* and if so, in what amount?
- Is the tenant entitled to recovery of the cost of the filing fee under the *Act?*

Background and Evidence

The parties confirmed that a copy of the tenancy agreement was not submitted in evidence. The parties agreed that the tenancy began on December 1, 2014. The tenant continues to occupy the rental unit.

The tenant's monetary claim of $4,421.20 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of use of patio (calculated at 15% of rent from December 1, 2014 to July 31, 2017)	$4,321.20
2. Filing fee	$100.00
TOTAL	**$4,421.20**

The tenant confirmed that the first written notice to the landlord regarding her concerns regarding the need to repair her patio submitted in evidence was dated April 10, 2017. A copy of the April 10, 2017 letter was submitted in evidence and was reviewed. The agent confirmed that the landlord received the April 10, 2017 letter from the tenant on April 11, 2017 and that the landlord was not aware of the tenant's concerns regarding the patio before the April 10, 2017 letter from the tenant.

The agent testified that the landlord responded on April 12, 2017 with a letter to the tenant which was reviewed during the hearing. In the April 12, 2017 the landlord writes in part:

> "We are in receipt of your letter dated April 10, 2017regarding the concerns of the patio space at [address of rental unit].
>
> Please be advised we are aware of this issue and are currently seeking estimates and recommendations from outsourced third parties.
>
> Once we feel we have all the necessary information to make a decision, and co-operation in regard to weather, we will have the repairs scheduled in…"
>
> [Reproduced as written except for anonymizing rental unit address]

The agent testified that three patios were in need of repair and unfortunately the other two patios were repaired before this final patio of the tenant. The agent referred to an estimate from a concrete repair company dated April 11, 2017. In that estimate submitted in evidence, it does not indicate "weather permitting" but does indicate a start date of April to May 2017. The agent testified that the tenant's patio was repaired by a different company then the company who provided the estimate submitted in evidence as the first company was unable to complete the repair. The agent also confirmed that she had nothing in writing to support that portion of her testimony. The parties agreed that the patio was finally repaired by August 1, 2017. The parties agree that the outside patio is 96 square feet ("SF") and that the rental unit interior is 900SF.

The parties agreed that the tenant was advised in writing ("first notice") that the patio would first be repaired on May 17-19, 2017. The parties disputed when that document was received. The agent confirmed that the landlord did not date the document referred to in evidence as to the date it was created or issued. The tenant claims she did not receive the first notice until May 17, 2017 while the agent claims

it was earlier but does not know a specific date. The tenant also testified that later on May 17, 2017 she received indication that the work would not be taking place after all.

The parties agreed that work was delayed to May 23-25, 2017 and that a second notice ("second notice") was received and was referred to in evidence and which was also not dated as to the date the document was created or issued. The parties disputed the date the tenant received the second notice. The tenant claims that she did not receive the second notice until May 23, 2017. The agent claims the tenant was advised on May 17, 2017 but did not have any documentary evidence to support her testimony.

The parties agreed that the repair to the patio that was shown as breaking away from the foundation of the building and was sinking down on one side, began on July 26, 2017 and was completed by August 1, 2017.

The tenant is seeking 15% reimbursement for the loss of the use of the patio from the time period of December 1, 2014 to the time the patio was repaired which in the application is listed as July 31, 2017. I note that December 1, 2014 is the start date of the tenancy. The tenant testified that she made the landlord aware of the patio concerns at the start of the tenancy which the agent did not agree with and which the tenant has provided no documentary evidence to support.

The tenant has confirmed that she continues to occupy the rental unit and has no plans to vacate the rental unit as of the time of the hearing.

The parties agreed that between April 2017 and August 2017 the monthly rent was $928.00 per month.

Analysis

Based on the evidence presented and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

There is no dispute that the patio is 96SF and the rental unit interior is 900SF. There is no dispute that the patio was in need of repair; however, the parties disputed the date in which the tenant advised the landlord in writing of the need for repair. The parties also disputed the timeframes communicated to the tenant by the landlord.

Section 7 of the *Act* states:

> **Liability for not complying with this Act or a tenancy agreement**
>
> **7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> (2) **A** landlord or **tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.**
>
> [My emphasis added]

Based on the above, the tenant was informed during the hearing that I find the tenant failed to comply with section 7(2) of the *Act* by allowing her monetary claim to increase between December 1, 2014 and July 19, 2017, the latter date of which is the date the tenant filed her application for dispute resolution. I find it unreasonable that the tenant would wait until July 19, 2017 to file her application dating back to 2014. Due to the most recent correspondence with the landlord being an April 10, 2017 request to make the repair to her patio, I will only consider the tenant's loss of use from April 10, 2017 to the date the patio was repaired on August 1, 2017.

Section 27 of the *Act* states:

> **Terminating or restricting services or facilities**
>
> **27** (1) **A landlord must not terminate or restrict a** service or **facility if**
>
> (a) **the service or facility is essential to the tenant's use of the rental unit as living accommodation, or**
>
> (b) providing the service or facility is a material term of the tenancy agreement.
>
> (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
>
> (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
>
> (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.
>
> [My emphasis added]

Based on the above, I find the landlord breached section 27 of the *Act* by failing to repair the tenant's patio in a reasonable time frame. I find the landlord has provided insufficient evidence to explain the delay between April 11, 2017 and the final repair completed on August 1, 2017. As the estimate dated April 11,

2017 says the work start date would be April to May 2017, and due to the lack of documentary evidence to explain the delays or weather-related issues, if any, I find the landlord took an unreasonable time to repair the tenant's patio. In addition, sections 32(1) and 32(5) of the *Act* state:

> **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.**
>
> (5) **A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.**
>
> [My emphasis added]

Based on the above, I find the landlord also breached section 32(1) of the *Act* by failing to maintain the patio and failing to repair it once advised of the need of repair in a reasonable timeframe. Therefore, I find the tenant has met the burden of proof as follows. I find the tenant is entitled to 10.67% of the amount of the monthly rent of $928.00 for the period of April 10, 2017 to July 31, 2017 as the repair was completed on August 1, 2017, which I have calculated as **$366.82** based on the following:

Month	**# of days of loss of use**	**Calculation**	**Amount granted**
April 2017	21 (April 10 to April 30 inclusive)	$928.00 monthly rent divided by 30 days = $30.93 per diem rent X 21 days = $649.53 x 10.67% = $69.76	$69.76
May 2017	31	$928.00 x 10.67%	$99.02
June 2017	30	$928.00 x 10.67%	$99.02
July 2017	31	$928.00 x 10.67%	$99.02
TOTAL OWED BY LANDLORD TO TENANT			**$366.82**

I caution the landlord to not breach section 27 and 32 of the *Act* in the future by restricting any facility and unreasonably delaying a repair.

As the tenant's application had merit, I grant the tenant the recovery of the cost of the filing fee pursuant to section 72 of the *Act* in the amount of **$100.00.**

I find the tenant has established a total monetary claim of **$466.82** comprised of $366.82 as described above for loss of use of the tenant's patio between April 10, 2017 and July 31, 2017 inclusive, plus the recovery of the cost of the filing fee in the amount of $100.00. Pursuant to section 67 of the *Act* I grant the tenant a one-time rent reduction from a future month's rent in the amount of **$466.82** in full satisfaction of the tenant's monetary claim.

I dismiss without leave to reapply the tenant's application for compensation between December 1, 2014 and April 9, 2017 due to what I find to be the tenant's failure to comply with section 7(2) of the *Act.* **I caution** the tenant to comply with section 7(2) of the *Act* in the future.

Conclusion

The tenant's application was partially successful.

The tenant has established a total monetary claim of $466.82 comprised of $366.82 as described above for loss of use of the tenant's patio between April 10, 2017 and July 31, 2017 inclusive, plus the recovery of the cost of the filing fee in the amount of $100.00. I have authorized the tenant a one-time rent reduction from a future month's rent in the amount of $466.82 in full satisfaction of the tenant's monetary claim.

Both parties have been cautioned as described above.
This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 18, 2018

Residential Tenancy Branch