



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC RP

Introduction

This hearing addressed the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an Order for repairs to be made to the unit pursuant to section 32 of the *Act*;
- recovery of the filing fee from the landlords pursuant to section 72 of the *Act*; and
- a Monetary Order as compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*.

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 landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidentiary package. In accordance with sections 88 and 89 of the *Act*, I find that landlord was duly served with the Application and evidentiary package.

Issue(s) to be Decided

Is the tenant entitled to a monetary award?

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

Can the tenant recover the filing fee related to the application?

Background and Evidence

Undisputed testimony provided by the tenant explained that this tenancy began on October 1, 2012. Rent is \$1,500.00 per month, and security and pet deposits of \$750.00 each, paid at the outset of the tenancy continue to be held by the landlord.

The tenant said she was seeking a monetary award of \$1,570.50, along with an order directing the landlord to perform repairs to the rental unit and to recover the filing fee associated with the application.

Specifically, the tenant sought a monetary award as follows:

Item	Amount
\$50.00/month for lack of access to public parkade from May to Sept 2017 (5 x 50.00 = 250.00)	\$250.00
Loss of Quiet Enjoyment @ \$200.00/month from May to September 2017	1,000.00
Stop Payment of a cheque	10.00
Miscellaneous expenses related to postage	310.50
Total =	\$1,570.50

During the hearing, the tenant explained that the harassment which she described suffering at the hands of the landlord continued to the present day, and wished for this to be considered should a monetary award be granted in her favour.

The tenant argued that she felt she was entitled to a monetary award related to the loss of access to the public parkade because the landlord had failed to provide her with a working fob, allowing access to the garage. The tenant said that she informed the landlord in May 2017 that the fob stopped working and required her to request access to the garage from the building's concierge, each time she wished to park. She explained that parking was included with the rental unit, and that the landlord made little effort to rectify her concerns surrounding access to the parkade.

The second portion of the tenant's application concerned loss of quiet enjoyment during the course of the tenancy. The tenant testified that she had suffered from anxiety and stress since May 2017. She said that starting in May 2017, her relationship with the landlord soured and that this has resulted in a loss of her ability to enjoy the rental unit. The tenant acknowledged that her claim of \$200.00 was an arbitrary number, but stated that she felt it represented the distress she has incurred. As part of her evidentiary package, the tenant explained that the landlord had asked her to blindly sign a new

tenancy agreement, and that the landlord had threatened her with “3 months’ notice” if the document was not signed.

The final portion of the tenant’s application for a monetary award concerns a cheque which the landlord purportedly lost and postage costs related to the proceedings. The tenant said that because of this missing cheque, she was forced to place a “stop payment” on the cheque and incurred a \$10.00 administration fee.

In addition to an application for a monetary award, the tenant is seeking an order directing the landlord to perform repairs to the rental unit. She explained that she had previously requested that the landlord paint the unit, and to replace the carpeting. The tenant acknowledged that when she moved into the rental unit, the carpet “didn’t look great” and was informed by the landlord, that the landlord planned on replacing the carpet following the end of her tenancy. The tenant said that during her tenancy, the carpet had become worn and prone to pulling. As part of her evidentiary package, the tenant provided photographs of the carpet, along with various other scuffs and dents which she claimed needed repairing.

The landlord asked that all aspects of the tenant’s application be dismissed. She said that arrangements were made with the building’s concierge to ensure that a replacement fob was available for the tenant upon receipt of the tenant’s request. In addition, she said that she paid \$80.00 to the tenant as a reimbursement for any expenses related to the issuance of a new fob.

While the landlord agreed that parking was to be provided to the tenant as part of the tenancy, the landlord said she was unaware that the tenant owned a vehicle and that the building had no record of the tenant registering a car in the garage. The landlord questioned the extent of loss associated with the tenant not having straight forward access to the parking area.

The landlord disputed that she had harassed the tenant in any way. She said, that the parties had enjoyed a civil relationship, and that she had not increased rent in the unit for the entire length of the tenancy. The landlord acknowledged being upset with the tenant but attributed these frustrations to the current tenancy dispute, which she said was “unnecessary.”

Oral testimony given by the landlord explained that the rental unit was purchased new, approximately 8 to 10 years ago, and she attributed any wear and tear to the normal usage of a rental unit. During the hearing, the landlord said she had offered to pay for

the paint that the tenant required to re-paint the unit. The landlord disputed that the carpet was in need of replacement and argued that the wear and tear which was identified by the tenant in her claim could not accurately be considered from a single photograph.

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 her entitlement to a claim for a monetary award.

During the hearing the tenant provided oral testimony explaining that she suffered a loss as a result of the landlord's failure to provide her with a working fob for the parking garage. In addition, the tenant provided written submissions arguing that she had faced harassment and bullying from the landlord, as the landlord attempted to have her sign a fixed-term tenancy agreement.

While I accept the tenant's testimony that she was without the use of the fob from May to September 2017, I do not find that any loss suffered stemmed directly from a violation of the tenancy agreement between the parties. The landlord testified that she took steps to address the issue of the broken fob. The landlord explained that she contacted the concierge to arrange for the re-issuance of a fob, that she paid \$80.00 for the fob replacement, and that she provided the tenant with all fobs associated with the rental unit. I find that any loss suffered by the tenant was the result of a breakdown in communication between the parties, as the landlord had made sufficient efforts to address the issue of access to the parking garage. For these reasons, I dismiss this portion of the tenant's application.

The second portion of the tenant's application concerns loss of quiet enjoyment related to the tenancy because of perceived bullying and threats of eviction by the landlord. Furthermore, the tenant explained that since May 2017 her relationship with the landlord had deteriorated and this now caused her to feel very anxious.

Residential Tenancy Policy Guideline #6 & 16 discuss in detail the issue of a tenant's right to quiet enjoyment, and damages under the *Act*.

Policy Guideline #6 notes, "A landlord is obliged 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." While *Policy Guideline #16* notes; The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred...An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward...nominal damages are a minimal award where there has been no significant loss or no significant loss has been proven, but it has been proven there has been an infraction of a legal right...aggravated damages are for intangible damage or loss.

I do not find that the tenant is entitled to an award for compensation based on her relationship with the landlord. My ability to grant a monetary order is limited to the above categories. I do not find that the tenant had shown that she is entitled to nominal damages, because I do not find that she has demonstrated that there has been an infraction of a legal right. In her written submissions, the tenant said that she was threatened with eviction based on a '3 month notice.' No such notice exists and the tenant did not produce any evidence that any threats were ever issued by the landlord, or that any form of notice to end tenancy was issued.

I do not find that the tenant qualifies for aggravated damages, as *Policy Guideline #16* notes that they may only be awarded, "in situations where significant damage or loss has been caused either deliberately or through negligence." While, I accept that the landlord and the tenant have had a breakdown in their relationship, I do not find that the tenant was able to show that this breakdown has become so severe that she has suffered significant loss. For these reasons, I dismiss this portion of the tenant's monetary award.

The tenant has also applied to recover \$10.00 she was forced to pay in bank fees for a cheque that was cancelled after being lost by the landlord. I accept this portion of the tenant's application for a monetary award.

The second portion of the tenant's application concerns repairs to the rental unit which she explained were necessary. Specifically, the tenant sought a repainting of the rental unit, and a replacement of the carpet. Section 32 of the *Act* states, "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."

The issue of a landlord's responsibility related to the maintenance of residential property is further discussed in *Residential Tenancy Policy Guideline #1*. It repeats much of what is noted above in Section 32 of the *Act*, stating, "the landlord is responsible for ensuring that rental units and property, meet 'health, safety, and housing standards' established by law, and are reasonably suitable for occupation given the nature and location of the property." Section 1-2 of the *Guideline* specifically discusses the issue of carpets and it notes, "At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair," while section 1-4 of the *Guideline* states, "The landlord is responsible for painting the interior of the rental unit at reasonable intervals."

Based on the testimony and evidence presented at the hearing by the tenant, I do not find that the landlord should be directed to re-paint the rental unit, or to replace the carpet. The tenant said that when she first occupied the rental unit, she noted to the landlord that the carpet did not "look great," however; no major damage or flaws with the carpet were reported. I find that the tenant received the carpet which was in a "reasonable state of repair" and is therefore not entitled to its replacement.

Testimony was provided by the landlord at the hearing that she offered to pay for the paint associated with re-painting the rental unit, and largely was supportive of the tenant's efforts to re-paint the rental unit. I encourage the landlord and the tenant to work together to see that this re-painting occurs.

As the tenant was unsuccessful in her application, she must bear the cost of her own filing fee and postage.

In lieu of a monetary award, the tenant may withhold \$10.00 from a future rent payment on one occasion, in satisfaction for the loss she suffered from the returned cheque.

Conclusion

The tenant's application for a monetary award is dismissed.

The tenant may withhold \$10.00 from a future rent payment on one occasion.

The tenant's application directing the landlord to complete repairs to the rental unit is dismissed.

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: January 19, 2018

Residential Tenancy Branch