



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, ERP, PSF, LRE, AAT

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 landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

The landlord did not attend this hearing which lasted approximately 30 minutes. The tenant appeared and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that she personally served the landlord with the tenant's October 24, 2017 application for dispute resolution and evidence on October 27, 2017 at the landlord's home. I find that the landlord was served in accordance with sections 88 and 89 of the *Act* on that date.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for the reduced value of the tenancy arising from the landlord's failure to make repairs?

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

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

Should the tenant be entitled to reduce rent for the landlord's failure to provide services or facilities required by law or the tenancy agreement?

Should the landlord be ordered to allow the tenant or her guests access to the rental unit?

Should conditions be set on the landlord's right to enter the rental unit?

Background and Evidence

The tenant provided undisputed evidence regarding the following facts. This tenancy began in March, 2016. There is no written tenancy agreement. The monthly rent is \$350.00 payable by the first of the month and includes all utilities.

There was a previous hearing regarding this tenancy on February 1, 2017 under the file number identified on the first page of this decision. In the decision of February 1, 2017 the arbitrator ordered that the landlord complete repairs and found that the tenant suffered a loss of quiet enjoyment. The arbitrator wrote in part:

1). I Order the landlord to *complete the following course of repairs* - within **8weeks following the date of this Decision.**

- *Repair or replace the shower tap so as the shower head no longer drips or leaks.*
- *Attend to and or repair the space / gap at, and between, the shower taps and the shower wall.*
- *Adhere or affix the bathroom sink cabinet to the wall.*
- *Affix the bathroom mirror to the wall.*
- *Reseal / replace the caulking or sealant in the bathroom and kitchen areas.*

I am not satisfied the landlord has done what is reasonable to address the ant infestation in the rental unit. Therefore,

2). I Order the landlord to address the management of ants in the tenant's rental unit as reasonable in the discretion of a pest control professional including as to when the management is done, and how it is done.

If the landlord does not comply with either Order it is available to the tenant to apply for compensation as a result.

The tenant testified that since the order was issued on February 1, 2017 the landlord has only made repairs to a small number of items and has failed to comply with the order in the timeframe provided. The tenant stated that 8weeks after the issuance of the order the repairs were not completed. In addition to the issues ordered to be repaired in the earlier hearing the tenant testified that there are additional deficiencies in the rental unit requiring repairs. The tenant said that the following issues currently require repairs or maintenance.

- 1) Ant Infestation
- 2) Gap between shower taps and the shower wall
- 3) Bathroom sink cabinet needs to be adhered or affixed to the wall
- 4) Bathroom mirror needs to be affixed to the wall
- 5) Bathroom and Kitchen areas need caulking to be resealed or replaced
- 6) Internet services have not been provided as provided in the tenancy agreement
- 7) Fridge leaks, makes noises and doesn't function properly
- 8) Front step remains broken despite landlord's attempt to fix it
- 9) Walkway does not have lights illuminating the area
- 10) No CO2 detector in the rental unit
- 11) Window design does not allow it open
- 12) No thermostat in the rental unit
- 13) Front door is not hung properly creating gaps
- 14) Wall between rental unit and adjacent garage is not insulated
- 15) There is no dead bolt lock for the door

The tenant uploaded into evidence numerous video files and photos of the rental unit in support of her application for repairs and relief. The tenant testified about the negative effect the lack of repairs has had on her quality of life. The tenant gave evidence about

the ant infestation in the rental unit and how she has had to discard food regularly because of the problem.

The tenant gave evidence that family members have stayed with her in the rental unit during the tenancy. The tenant provided evidence that while these stays were temporary the landlord harassed and antagonized both her guests and herself.

The tenant seeks a monetary award of \$8,825.00 comprised of loss of quiet enjoyment, the loss of groceries, and rent reduction. In addition the tenant testified that she has contracted for her own internet service and seeks to reduce the rent by \$50.00 for that item.

Analysis

Section 32 (1) of the Act states that:

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.

Residential Tenancy Act Regulations Schedule 8, in relevant part, states:

8 (1) Landlord's obligations:

- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
- (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

In this matter, I find the above legislation effectively states a landlord is responsible to make repairs when a request for repairs is to ensure reasonable aesthetics, reasonable functioning or lawful compliance with health, safety and housing standards.

Residential Tenancy Policy Guidelines 1 in relevant part states a landlord is responsible for pest control.

The tenant provided undisputed evidence as the landlord did not attend this hearing. I accept the undisputed evidence that the landlord failed to complete the full repairs ordered in the previous hearing and some of the items that were to be repaired have worsened. I accept the undisputed testimony of the tenant that there are additional deficiencies throughout the rental unit which they have requested the landlord address but has been neglected. Based on the tenant's testimony and evidence I find it appropriate to issue the following order for repairs.

I Order the landlord to complete the following repairs.

- 1) Address the management of ants in the rental unit by retaining the services of a pest control professional to eliminate the infestation.
- 2) Repair the gaps between the shower taps and the shower walls.
- 3) Adhere or affix the bathroom sink cabinet to the wall.
- 4) Affix the bathroom mirror to the wall.
- 5) Reseal or replace the caulking in the bathroom and kitchen areas.
- 6) Retain the services of a professional to inspect the function of the refrigerator unit and ensure that it is functioning properly. To make such repairs or replacement of the refrigerator as advised.
- 7) Repair the front step to the rental unit.
- 8) Repair the front door to ensure it is hung properly and there are no gaps with the door frame.

The above repairs are to be completed by the landlord by March 1, 2018 at the landlord's expense.

I find the other items requested by the tenant to more properly be characterized as non-essential improvements. There is insufficient evidence to find that the items requested are necessary to make the rental unit suitable for occupation. I find that some of the items requested, such as the absence of a thermostat in the rental unit or lack of lights along the walkway were attributes of the tenancy from the outset and not deficiencies

requiring an order to repair. Consequently I dismiss the tenant's application for the following items requested by the tenant.

- 1) Walkway does not have lights illuminating the area
- 2) No CO2 detector in the rental unit
- 3) Window design does not allow it open
- 4) No thermostat in the rental unit
- 5) Wall between rental unit and adjacent garage is not insulated
- 6) There is no dead bolt lock for the door

Section 65 (1)(f) of the *Act* allows me to reduce the past or future rent by an amount equivalent to the reduction in value of a tenancy agreement.

I find that the landlord has failed to perform the repairs ordered by the earlier arbitrator and that the tenant has been without reliable internet services as promised under the tenancy agreement. While I accept the tenant's undisputed evidence that internet services promised by the landlord has not been provided I find that the sum requested by the tenant is not entirely borne out in the evidence. The tenant seeks a rent reduction of \$50.00 for lack of internet. The tenant makes no suggestion as to the value of the repairs not completed.

While the lack of reliable internet services in the rental unit may be inconvenient, I do not find that it is so material as to reduce the tenant's ability to use the rental unit.

The tenant has testified that she continues to reside in the rental unit. The nature of the deficiencies are such that the tenant is constantly aware of the need for repairs and must alter some of her routines such as not storing food openly, but not so severe that the rental unit is uninhabitable. The deficiencies are unavoidable in the tenant's daily life but are surmountable.

I find that an appropriate loss in the value of the tenancy resulting from the landlord's failure to complete the repair order within the time provided by April 1, 2017 and provide reliable internet services to be \$35.00, approximately 10% of the monthly rent.

In accordance with section 65(1)(f) of the *Act*, I issue a one-time retroactive monetary award in the tenant's favour in the amount of \$350.00 {i.e., 10 months (April 1, 2017 to January 31, 2018) @ \$35.00 per month = \$350.00} to compensate the tenant for the loss in value of her tenancy stemming from the landlord's failure to abide by the terms of the previous arbitrator's order and the tenancy agreement.

In the event that the landlord does not complete all of the listed repairs ordered by the previous arbitrator by March 1, 2018, I order that the monthly rent for this tenancy for March, 2018, is reduced by \$35.00 from \$350.00 to \$315.00. I order that the tenant's rent will return to the normal monthly amount required by the tenancy agreement and the *Act* in the month following the completion of these repairs and restoration of internet services.

Should a dispute arise as to the extent to which the repairs ordered by the previous arbitrator have been completed, I order that the rent remain at the previous month's reduced rent until such time as the landlord has applied for and obtained an order from an arbitrator appointed under the *Act* as to whether the repairs have been completed in accordance with the previous arbitrator's decision. The landlord is at liberty to apply for a determination as to the landlord's compliance with the previous arbitrator's decision once the landlord has undertaken the repairs ordered by the previous arbitrator.

The tenant also 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.

I find that the tenant has provided sufficient evidence to demonstrate that the landlord's failure to perform repairs as ordered and deal effectively with the pest infestation has caused the tenant a loss of quiet enjoyment. The tenant provided evidence about the inconvenience to her daily routine, and how she has been forced to throw out much of her food when the pests invade. However, I find that there is insufficient evidence to support the full amount that the tenant claims. While I accept the evidence that the process of dealing with the landlord through several hearings has been stressful the tenant has been able to continue to reside in the rental unit. The nature of the majority of repairs is not so fundamental as to make the rental unit uninhabitable. While the lack of repairs creates inconveniences and hazards I find that they are not so fundamental as to justify a monetary award in the full amount claimed by the tenant. I find that the tenant has suffered a loss of quiet enjoyment due to the ongoing pest infestation and lack of repairs. I find that the landlord was ordered to perform repairs within 8 weeks of the hearing of February 1, 2017. The landlord was also ordered to deal with the infestation of ants at that hearing. The landlord has failed to take adequate action to comply with the orders and the problems remain as of the date of the hearing, January 15, 2018.

I find it appropriate to issue a one-time monetary award in the tenant's favour in the amount of \$1,200.00 for loss of quiet enjoyment, the approximate equivalent of 30% of the monthly rent for a period of 10 months from when the repairs were ordered completed to the date of the hearing.

I find that there is insufficient evidence in support of the portions of the tenant's application seeking an order allowing access to the rental unit or to restrict the landlord's right of access. While I accept the tenant's evidence that the landlord has made comments about the tenant's guests, I find that there is insufficient evidence that access to the rental unit has been prohibited or barred. Similarly, I find that there is insufficient evidence that the landlord has entered the rental unit without providing notice to the tenant or in accordance with the *Act*. I therefore, dismiss this portion of the tenant's application.

Conclusion

The landlord is ordered to make the following repairs within 8 weeks of this decision, at the landlord's expense.

- 1) Address the management of ants in the rental unit by retaining the services of a pest control professional to eliminate the infestation.

- 2) Repair the gaps between the shower taps and the shower walls.
- 3) Adhere or affix the bathroom sink cabinet to the wall.
- 4) Affix the bathroom mirror to the wall.
- 5) Reseal or replace the caulking in the bathroom and kitchen areas.
- 6) Retain the services of a professional to inspect the function of the refrigerator unit and ensure that it is functioning properly. To make such repairs or replacement of the refrigerator as advised.
- 7) Repair the front step to the rental unit.
- 8) Repair the front door to ensure it is hung properly and there are no gaps with the door frame.

I issue a monetary order in the tenant's favour in the amount of \$1,550.00 under the following terms, for retroactive rent reduction and loss of quiet enjoyment:

Item	Amount
Rent Reduction April 2017	\$35.00
Rent Reduction May 2017	\$35.00
Rent Reduction June 2017	\$35.00
Rent Reduction July 2017	\$35.00
Rent Reduction August 2017	\$35.00
Rent Reduction Sept 2017	\$35.00
Rent Reduction Oct 2017	\$35.00
Rent Reduction Nov 2017	\$35.00
Rent Reduction Dec 2017	\$35.00
Rent Reduction Jan 2018	\$35.00
Loss of Quiet Enjoyment	\$1,200.00
Total Monetary Order	\$1,550.00

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.

In the event that the landlord does not complete all of the listed repairs ordered by the previous arbitrator by March 1, 2018, I order that the monthly rent for this tenancy for March 2018, is reduced by \$35.00. I order that the tenant's rent return to the normal monthly amount required by the tenancy agreement and the *Act* in the month following the completion of these repairs and internet services.

Should a dispute arise as to the extent to which the repairs ordered by the previous arbitrator have been completed, I order that the rent remain at the previous month's reduced rent until such time as the landlord has applied for and obtained an order to modify the reduced rent from an arbitrator appointed under the *Act*. The landlord is at liberty to apply for a determination as to the landlord's compliance with the previous arbitrator's decision once the landlord has undertaken the repairs ordered by the previous arbitrator.

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 18, 2018

Residential Tenancy Branch