



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding QUAY PACIFIC PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP MNDCT MNRT OLC PSF FFT RP 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 loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

JJ ("landlord") appeared as agent on behalf of the landlord in this hearing, and had full authority to do so. All parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's application and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*. The landlord submitted evidence, but did not serve this evidence on the tenant as required by section 88 of the *Act*. The landlord consented to the exclusion of this evidence.

Issues

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

Is the tenant entitled to an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to recover the cost of the filing fee from the landlord for this application?

Is the tenant entitled to an order requiring the landlord to perform repairs?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on April 1, 2017, with monthly rent set at \$2,400.00, payable on the first of the month. The tenants rent the top two floors of the heritage home, and the landlord's daughter and her boyfriend live in the basement suite.

In November 2017 the boyfriend of the landlord's daughter knocked on the tenant's door to inform her that there was a flood in the basement. He entered the tenant's suite to investigate the source of the flood, and the landlord's agent informed the tenant that a plumber would be dispatched, although no plumber attended on that date. A plumber did not attend the residence until January 2018, and submitted a report to the landlord in February 2018. The report stated that there was actual leak, and that the source of the flooding was from the water splashing onto the shower curtain, and down the wall. The tub is an older claw foot tub. The landlord submitted that as there is no leak, that no repairs or compensation is necessary.

The tenant submitted the following monetary claim:

Item	Amount
Cost of Plumber	\$169.16
Cost of Time (4 hours x \$30.00)	120.00
1 Month's Rent Compensation	2,400.00
Loss of Quiet Enjoyment	2,111.00
Total Monetary Order Requested	\$4,900.16

The tenant is requesting compensation as she has stopped using the shower. The tenant testified that she dispatched her own plumber at the cost of \$169.16 as the landlord's plumber was only in communication with the downstairs tenants. The tenant testified that she submitted this invoice to the landlord, but the landlord refused to reimburse her. The tenant is also requesting \$120.00 for her time dealing with the issue (4 hours x \$30/hour).

The tenant is also applying for one month's rent reduction for the lack of repairs by the landlord, and \$2,111.00 in compensation for loss of quiet enjoyment. The tenant testified in the hearing that she was unable to provide further details for how she determined the amount for loss of quiet enjoyment. The tenant testified that in addition to the water from the shower, she is requesting repairs to the stair railing to the attic bedroom and bathroom. She testified that the landlord did attempt to repair the railing in December, but the repair was not done properly, and the railing is in need of repairs again. The landlord testified that he was not made aware of the situation until the tenant filed her application, and that he contacted the handyman who performed the repairs. The landlord testified that on March 15, 2018 the handyman notified him that he would be in contact with the tenant, but the tenant has not heard back. The landlord agreed in the hearing that he would follow up as this repair is still under warranty.

The tenant also requested repairs to the outside porch railing and support beams. The landlord did not dispute that these repairs were required, but due to the age and character of the home, the work had to be done in accordance with special heritage codes as the home is over 100 years old. The landlord testified that the beams were replaced in 2012, and there is no safety issue. The landlord testified that in order for the repairs to be done safely, it would require the vacant possession of the home, and hence the delay in repairs. The tenant testified that due to the nature of these required

repairs she is unable to entertain guests at her home without warning them of issues for safety reasons.

Analysis

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

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.

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.”

I have considered the testimony of both parties, and while the tenant had provided testimony to support that she has been inconvenienced with ongoing issues during this tenancy, the tenant did not provide sufficient evidence to establish that the landlord failed to fulfill their obligations as required by section 32(1) of the *Act* as stated above. I accept the landlord's testimony that the home is extremely old, and that the landlord has taken the necessary steps to maintain the property in a state of repair as required by law with regard to the age of the home and availability of materials for the home. The tenant did not provide any witness testimony, nor did she provide any expert evidence or reports, to support that the home is unsafe. I find that the inconvenience and stress that the tenant faced are due to age and character of the home, rather than their failure to fulfill their obligations, as required by section 32 of the *Act*.

The landlord agreed during the hearing to follow up with the repairs to the railing. Accordingly I order that the landlord contact the handyman immediately to address the issue of the outstanding repairs and warranty issue.

Section 33 of the *Act* states the following in regards to emergency repairs:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system...
 - (v) the electrical systems....

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs...

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b)...

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I find that the tenant failed to establish that the water leak qualifies as an emergency repair as defined by Section 33 (1)(c) of the *Act*. Accordingly, I find that she did not have the right to deduct any rent for any repairs, nor am I able to find that the tenant is entitled to an order requiring the landlord to reimburse the tenant \$169.16 she had paid the plumber.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which 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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it

stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

(b) freedom from unreasonable disturbance;...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

While I have considered the tenant's monetary claim of one month's rent as well as \$2,111.00, I note that the tenant did not provide sufficient evidence to documentation to support value of the monetary loss claimed by the tenant. I find that the landlord has not denied the tenant access to the bathtub, or facilities that should be provided as part of the monthly rent.

Although I find that the tenant is inconvenienced by ongoing issues that require repairs in the home, I find there is insufficient evidence for me to make a finding that the landlord had failed to meet their obligations regarding this matter. I find that the landlord had complied with the *Act*. The landlord disputes being aware of some of the issues until the tenant had filed her application for dispute resolution, and the landlord agreed to follow up on these repairs. On this basis, I am dismissing the tenant's monetary claim for the loss of quiet enjoyment as a result of the landlord's failure to comply with the *Act*, as the tenant did not provide sufficient evidence that this loss of quiet enjoyment was the result of the landlord's actions. The tenant's application for a reduction of one month's rent as well as \$120.00 for her time are also dismissed as the tenant failed to establish how the landlord failed to comply with the *Act*, and how this failure contributed to these losses.

As the filing fee is normally awarded to the successful party after a hearing, I dismiss the tenant's application for recovery of the filing fee.

Conclusion

I dismiss the tenant's entire monetary application without leave to reapply.

I order that the landlord take immediate action by following up with this handyman regarding the outstanding repairs and warranty issues brought up by the tenant in this hearing.

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: April 25, 2018

Residential Tenancy Branch