



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *RP, MNDC, OLC, LRE, LAT, FF*

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for an order to have repairs done, to restrict the landlord's right to enter the rental unit, for authorization to change locks and for the landlord to comply with the *Act*. The tenant also applied for a monetary order for compensation and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves. The landlord's agents also attended the hearing.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Both parties provided extensive documentary evidence. All parties' testimonies, witnesses and evidence have been considered in the making of this decision. As this matter was conducted over 75 minutes of hearing time, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

At the start of the hearing, I explained to the tenant that as per section 27 of the *Residential Tenancy Policy Guideline*, the monetary limit of my jurisdiction is limited to the same amount as the Provincial Court which is \$35,000.00 and that a claim for money that exceeds that amount must be heard in Supreme Court. I also explained to the tenant that she had the option of abandoning part of her claim to come within the jurisdictional limits of the *Residential Tenancy Act*.

The tenant chose to abandon the portion of her claim that was in excess of \$35,000.00. The tenant confirmed that she understood that the abandoned portion of her monetary claim was dismissed without leave to reapply.

Issues to be decided

Has the landlord fulfilled his responsibilities as a landlord with regard to maintenance and repairs? Is the tenant entitled to compensation and the filing fee?

Background and Evidence

The tenancy started on September 01, 2014. The monthly rent is \$1,700.00 and is due on the first of each month. In June 2018, the landlord listed his home for sale. The home sold on and the purchaser requested the landlord to serve the tenant with a notice to end tenancy as the purchaser intends to occupy the rental unit. The parties agreed to end the tenancy effective February 01, 2019.

The tenant stated that in September 2016, the tenant informed the landlord that the fence was in need of repair. The landlord stated that one panel was damaged and falling over while the tenant stated that two panels were damaged. The tenant fixed the one/two panels of the fence himself and in September 2017 the landlord replaced the fence.

The tenant is claiming a rent reduction of \$850.00 for 36 months in the total amount of \$30,600. The tenant stated that the fence was weak and inadequate from the start of tenancy and therefore her claim was for a rent reduction for the 36 months that the damaged fence provided limited safety and security

The tenant stated that through the tenancy the hot water supply was inadequate and by the evening there was limited hot water available for use. The tenant stated that she informed the landlord verbally in November 2014 and gave him a written notice in June 2017. The landlord denied having received a written complaint about the hot water in June 2017 but stated that he received a text message from the tenant on May 30, 2018. The landlord had the tank replaced in September 2018. The tenant agreed that at this time the hot water supply was adequate.

The tenant is claiming \$40,800.00 for the inconvenience endured due to the lack of sufficient hot water over the 4 years of the tenancy.

The tenant also complained of mouldy windows and stated that the mould was the cause of her medical problems and that despite her verbal complaints to the landlord, the landlord took no action. The landlord stated that he had a plumber attend the unit to address the tenant's complaint of mould.

The plumber's report was filed into evidence. The plumber stated that he visited the rental unit on September 02, 2018 to carry out repairs to faucet drips, hot water supply and other plumbing related issues. The plumber found that the bathroom fan was unplugged and therefore the moisture continued to remain in the bathroom resulting in mould. The tenant stated that the fan was too noisy and therefore did not use it.

The tenant is claiming compensation for the presence of mould and mould related medical issues in the amount of \$425.00 per month for 24 months, for a total claim of \$10,200.00.

The tenant also stated that the washer and dryer did not work properly and despite her verbal complaints the landlord did not replace the machines. The tenant stated that she gave the landlord a written list of repairs on June 24, 2018 when the landlord visited the rental unit to repair the vacuum. The landlord agreed that he visited on that day but denied having received a list of repairs in writing.

The landlord stated that he received a written request from the tenant in May 2018 that the machines were not functioning properly and he had the machines replaced on October 02, 2018.

The tenant is claiming compensation of \$200.00 per month for 16 months in the total amount of \$3,200.00 for malfunctioning laundry machines.

The tenant stated that one of the panes of the double glass on the sidelight near the front door was damaged and eventually broke. The tenant stated that the glass on the inside of the house was intact but the glass on the outside was initially cracked and when it finally broke off, a sharp edge was left exposed which posed a danger to anyone who touched it or brushed by it.

At first the landlord's agent stated that there was no safety hazard as the tenant had cleaned up the shards of glass. Later the landlord himself agreed that the sharp edge on the piece of glass that was left behind could cause injury. The tenant agreed that no one got hurt.

The tenant stated that she informed the landlord of the broken glass on March 02, 2018 and it got fixed three months later on May 30, 2018. The landlord stated that he had to leave town due to a death in the family and the repair was further delayed by the late arrival of the ordered glass.

The tenant is claiming compensation in the amount of \$200.00 per month for 3 months in the total amount of \$600.00

The tenant is also claiming compensation for a bathtub faucet leak which she alleges was left unattended for 17 months. The tenant repeated that she had given the landlord a list of repairs on June 24, 2017 which the landlord denied having received. The landlord stated that he was informed of the problem in September 2018 and the plumber visited the tenant on October 02 to repair it. The tenant stated that this drip was not fixed that day because the plumber did not have a part. The landlord is ordered to have this attended to within the next ten days.

The tenant is claiming compensation in the amount of \$100.00 per month for 17 months for a total of \$1,700.00.

The tenant also stated that the shower dripped for 4 months before it got repaired and she is claiming \$425.00 per month for the 4 months for a total of \$1,700.00.

The tenant stated that once the landlord listed the home for sale, she was harassed by the realtor who had showings without providing 24 hour notice. The tenant is claiming \$1,700.00 for the four months of showings for a total of \$6,800.00.

The landlord responded by saying that the realtor accessed the rental unit 12 times and provided at least 24 hours' notice prior to each access. The landlord stated that the realtor conducted a total of 9 showings, 2 open houses and one inspection. The landlord filed a log and a copy of the text messages between the realtor and the tenant. For most part the communication was cordial and the tenant cooperated.

However, the tenant stated that for the inspection of the house, the realtor attended along with the inspector. The tenant stated that she asked the realtor to leave but the realtor remained in the house while the inspection was being conducted. The tenant testified that the conversation got heated and the realtor did not leave the rental unit. The tenant called the police.

The tenant is claiming the following:

1.	Falling back fence	\$30,600.00
2.	Hot water issues	\$40,800.00
3.	Mouldy windows	\$10,200.00
4.	Malfunctioning laundry machines	\$3,200.00
5.	Broken glass in side-light	\$600.00
6.	Bath tub faucet leak	\$1,700.00
7.	Shower leak	\$1,700.00
8.	Loss of quiet enjoyment	\$6,800.00
9.	Filing fee	\$100.00
	Total	\$95,700.00

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I note that this tenancy started in September 2014 and the tenant made this application on October 29, 2018 more than four years into the tenancy and approximately three months prior to the end date of the tenancy which is scheduled for February 01, 2019. Most of the alleged problems that the tenant is claiming compensation for, by her testimony were ongoing during the tenancy. I also note that the tenant's claim for compensation exceeds the total amount of rent paid during the term of the tenancy.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Following from the tenant's failure to report the problems that she is claiming compensation for to the landlord in a timely manner and her failure to address the problems by applying for dispute resolution while the problems were ongoing and the landlord was allegedly not addressing the reported problems in a timely fashion, or shortly after each of the occasions when there was a problem, pursuant to the doctrine of laches, I find that a major portion of the tenant's application must hereby be dismissed.

1. Falling back fence - \$30,600.00

Based on the testimony of both parties, the tenant reported the problem to the landlord in the fall of 2016. The testimony of both parties differs regarding the number of panels that were leaning over. The landlord stated there was only one problematic panel while the tenant stated that two panels were leaning. The tenant testified that the male tenant fixed the panel(s) by propping them up. The tenant agreed that the landlord replaced the entire fence in September 2017.

Based on the above and the photographs filed into evidence by the landlord, I find that the tenant acted appropriately and propped up the fence – a fix that lasted until the landlord replaced the entire fence. The tenant has not proven that she was inconvenienced or that the propped up panel(s) posed a threat to the safety of the occupants of the rental unit. I find that the tenant's claim for \$30,600.00 is unreasonable and unsubstantiated. Accordingly I dismiss the tenant's claim for compensation.

2. Hot water issues - \$40,000.00

The tenant stated that the hot water tank did not work properly through the tenancy and sometimes there was no hot water in the later part of the day. The tenant stated that she informed the landlord verbally in November 2014 and June 2017. The landlord stated that he was given a written notice in May 2018 and a plumber was hired to check out the tank. The plumber reported that tank was installed in 2011 and that the hot water supply was not a problem but there was corrosion near the inlet to the tank and recommended that the tank be replaced before it started leaking. The landlord testified that the tank was replaced in September 2018.

The tenant has made a claim for \$40,000.00 for the lack of hot water during certain times of the day. I find that the landlord took action when he received a written complaint from the tenant and had the tank checked out by a plumber.

Based on the plumber's report that was filed into evidence, I find that the hot water supply was adequate. The landlord acted on the plumber's recommendation to replace the tank as there was some corrosion near the water inlet. I also find the amount of the tenant's claim is unreasonable and that if the supply of hot water was problematic and the landlord did not address the issue, the tenant could have filed an application for dispute resolution at the time the problem was ongoing. I dismiss the tenant's claim for compensation.

3. Mouldy windows - \$10,200.00

The landlord's plumber visited the rental unit on September 02, 2018 and reported the presence of heavy mould on the inside of the fiberglass shower membrane and door. The plumber used a moisture and mould detector on all the walls surrounding the shower and found no trace of moisture or mould.

The plumber stated that the bathroom fan was unplugged and off at the switch. The tenant agreed that she did not use the fan because it was too noisy. The plumber informed the tenant that the fan was required to be running to pull moisture out of the shower. The plumber plugged in the fan and switched it on.

Based on the plumber's report and the tenant's admission that she did not use the fan in the bathroom, I find that the mould in the rental unit was a result of the fan being switched off by the tenant. The tenant's claim for compensation in the amount of \$10,200.00 is dismissed.

4. Malfunctioning laundry machines - \$3,200.00

The landlord stated that in a complaint list given to the landlord on June 24, 2018, the tenant informed him of a noise in the dryer and that the washer would not spin on occasion. The landlord had the appliances looked at and found that it would not make financial sense to repair the machines. The landlord had them replaced on October 02, 2018.

Based on the above, I find that even though the machines were not functioning at peak levels, I find that the tenant was not without the laundry facility. The landlord had the machines checked out and eventually replaced.

The tenant's claim for \$3,200.00 is dismissed.

5. Broken glass in side light - \$600.00

The tenant testified that the outside pane of the double paned side light at the front entrance was cracked and eventually broke. On March 02, 2018, the tenant informed the landlord about the breakage and cleaned up the shards of glass. However the portion of the pane that was left behind in the frame had a sharp edge that was a potential hazard. The landlord agreed that the sharp glass could cause an injury. The tenant testified that no one was injured.

The landlord provided proof that he had ordered the glass and there was a delay in having it delivered. The landlord also filed evidence to support a family emergency that further delayed the installation of the glass. The glass was finally installed on May 30, 2018 which is approximately three months after the tenant reported the problem. The tenant has claimed \$600.00 as compensation.

Based on the above, I find that the glass broke on March 02, 2018 and got replaced on May 30, 2018, thereby posing a threat of injury to the occupants for approximately three months. While I accept that the landlord made efforts to replace the glass, the exposure to danger was prevalent for the time it took to get the pane replaced. I find that the tenant is entitled to compensation even though no personal injury resulted from the broken glass.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Accordingly, I award the landlord a minimal award of \$100.00.

6. Bath tub faucet leak - \$1,700.00

The tenant stated that she made several verbal complaints between June 2017 and September 2018. The landlord denied having received verbal complaints but agreed that he had received a written list of complaints on May 30, 2018. The tenant complained that the bath tub faucet leaked and the tub drained very slowly.

The plumber visited the unit on September 02, 2018 and found that the tub was draining normally but the seal on the drain stopper needed to be replaced. During the hearing the landlord agreed to have it replaced immediately.

I find that the tenant's claim for compensation must be dismissed.

7. Shower leak - \$1,700.00

The tenant stated that she notified the landlord about the leak in May 2018 and he made several attempts to fix the leak. Eventually the landlord called a plumber who fixed the leak in September 2018.

Even though the shower was dripping, I find that the shower still operated and therefore the tenant's claim for compensation is dismissed.

8. Loss of quiet enjoyment - \$6,800.00

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. Such interference might include intentionally removing or restricting services to the tenant.

The tenant stated that the actions of the realtor caused her the loss of quiet enjoyment. The tenant alleged that the realtor visited her and had showings without providing notice. The landlord filed evidence to support his testimony that the realtor visited the unit 12 times over 5 months and provided adequate notice prior the each visit.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed.

I find that the realtor provided adequate notice prior to her visits and that the communication by text message between the realtor and the tenant, as filed into evidence, is cordial for most part. I further find that the tenant may have been inconvenienced during the showings by the realtor but temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Accordingly, I find that the tenant has not proven her case for compensation for the loss of quiet enjoyment.

9. Filing fee - \$100.00

Since the tenant has not proven most of her case, she much bear the cost of filing her own application.

Overall the tenant has established a claim of \$100.00. The tenant may make a onetime deduction of \$100.00 from a future rent.

Conclusion

The tenant may make a one-time deduction of **\$100.00** from a future rent.

The remainder of the tenant's application is dismissed without leave to reapply.

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 17, 2018

Residential Tenancy Branch