Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 17, 2018 (the "Application"). The Tenant applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

This matter came before me for a hearing January 18, 2019 and an Interim Decision was issued January 22, 2019. This decision should be read with the Interim Decision.

The Tenant appeared at the hearing with D.B. to assist. The Landlord appeared at the hearing with C.C. to assist him given a language barrier.

The Landlord was ordered in the Interim Decision to serve evidence submitted to me on the Tenant. The Tenant confirmed he received this.

The Landlord submitted evidence prior to the second hearing. As stated in my Interim Decision, the parties were not permitted to submit further evidence. I have not considered this evidence.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the parties and the admissible documentary evidence. I have only referred to the evidence I find relevant in this decision.

I note that an issue arose in relation to D.B. testifying for the Tenant. At the first hearing, the Tenant was in the middle of providing testimony when D.B. interrupted him and told me what the Tenant was trying to say rather than allowing the Tenant to provide his testimony. This matter involves the Tenant and Landlord. D.B. is not a tenant or occupant of the rental unit and is not a party to this proceeding. I told the Tenant and D.B. that they could make submissions how they

wished but that I would give less weight to the testimony of D.B. than that of the Tenant when D.B. is simply relaying what the Tenant told him and not what he himself observed.

I allowed D.B. to give evidence and make submissions throughout the two hearings. I did not stop D.B. from giving evidence or making submissions unless the evidence or submissions were irrelevant to the issue before me. At one point, D.B. raised an issue in relation to me allowing C.C. to speak for the Landlord. C.C. spoke for the Landlord given a language barrier which I view as a very different situation than D.B. speaking for the Tenant who was capable of providing his own testimony.

I also note that I had to tell the Tenant and D.B. three times not to interrupt C.C. and the Landlord despite the parties being told at the outset of both hearings that they were not to do so.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?

2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant sought $10,400.00 in compensation based on the following issues:

1. Loss of quiet enjoyment;
2. Loss/lack of services;
3. Pest control;
4. State of property; and
5. Unlawful entry.

A written tenancy agreement was submitted as evidence. The tenancy started August 01, 2017 and was for a fixed term of 12 months. Rent was $2,400.00.
The parties agreed the tenancy ended May 16, 2018.

At the outset, C.C. raised an issue in relation to D.B. as he is a tenant at another rental unit and has filed four applications for dispute resolution against the Landlord. C.C. advised that the Tenant was a witness in some of those proceedings. C.C. also submitted that the Tenant's evidence was used in the prior proceedings and is not reliable in relation to this tenancy. The file numbers for the proceedings were provided and are noted on the front page of this decision.

Loss or lack of services

The Tenant testified as follows. The oven stopped working properly three weeks into the tenancy. He is a baking student and loves to cook. He told the Landlord about the issue. The

Landlord never really fixed the oven. The Landlord would attend the rental unit in relation to this issue with friends or repairmen who would leave a mess and not be respectful. The Landlord brought a toaster oven for the tenants to use.

C.C. testified as follows on behalf of the Landlord. The Landlord repaired the oven twice, once in December and then in April. The first repair related to the burner. The Landlord provided a counter top oven as an alternative while waiting for parts. The second time the oven had to be fixed was due to the Tenant misusing and damaging it.

In reply, the Tenant testified that the oven was old and had faulty wiring. He said the Landlord did not understand the issue.

The Tenant further testified as follows. The tenants paid hydro. The dryer took longer than usual to dry clothing. The dryer was kept outside under the porch. The dryer cost more to run because it was kept outside. The Landlord subsequently moved the dryer.

I asked the Tenant if he had submitted any evidence showing it cost more to run the dryer because it was outside. The Tenant said there was no way of knowing this without in-depth research.

C.C. and the Landlord testified as follows. The Landlord was advised by an inspector May 9th that he needed to move the dryer. The Landlord moved the dryer to the basement of the house. The tenants could still use the dryer once it was moved to the basement. The Tenant was told the dryer would be moved.

In reply, the Tenant denied that he knew he could use the dryer once it had been moved.

Loss of quiet enjoyment and unlawful entry

The Tenant testified as follows. The Landlord would attend the rental unit unannounced at inappropriate hours of the day. At times when he attended, the Landlord would leave a mess or be disruptive. The Landlord would bring other people with him when attending the rental unit. The Landlord would attend the rental unit to fix things if he was in the area even if it was not the best time. The Landlord would not give 24 hours notice before attending. The Landlord would come onto the property without him knowing.

The Tenant gave the following examples. One Sunday the Landlord knocked on the door at 10:00 p.m. about something that was not urgent. The Tenant told the Landlord he was busy, but the Landlord had an element for the stove and was very persistent and would not leave. The Landlord came in and worked on the stove. One day, the Landlord just showed up to fix the gate in the front yard because he was in the area.

C.C. testified as follows on behalf of the Landlord. The Landlord always asked the tenants about attending the rental unit before he did. There were two other occupants in the rental unit. The Landlord did not attend the rental unit without one of the occupants allowing him to do so.

Pest Control

The Tenant testified as follows. The rental unit had a rat and mouse problem. It was February or March when this issue arose. The problem was never addressed by a professional. The issue was not resolved during his tenancy. The Landlord would tell the tenants to do things they were already doing such as cover their food. One of the windows in the rental unit would not close and so the rats and mice could enter. They could also enter through the basement.

C.C. testified as follows on behalf of the Landlord. The Landlord talked to the Tenant several times about cleanliness of the rental unit as it was not kept clean. The tenants did not clean up food or garbage. It is the Landlord's position that the tenants had a responsibility to keep the rental unit clean to address the rat and mouse issue. The Landlord did not receive complaints about this issue until the Tenant's last day at the rental unit. At this time, the Landlord hired a pest control company to deal with the issue.

In reply, the Tenant and D.B. pointed to evidence submitted to show the Landlord was aware of the problem earlier than stated. D.B. testified that the rats were in the rental unit before the Tenant moved in and he called the city on the Landlord about the issue.

State of property

The Tenant testified as follows. The rental unit seemed fine when he moved in, but things quickly fell apart. The heating did not work. The window in the bathroom was painted shut and could not be opened. Black mold became a problem due to a lack of air flow in the bathroom. The mold issue was never fixed. The window in his roommate's room never closed properly. His friend once got locked in a room because of the door lock not working properly. The tenants did not have access to the garage for the first two months of the tenancy. The garage was part of the tenancy agreement. This was "not a big deal" but would have been extra storage space.

D.B. submitted that the Tenant had to move out and was displaced because of the state of the rental unit and oven issue. He said the roof of the rental unit leaked and was never fixed.

C.C. testified as follows on behalf of the Landlord. The roof was repaired in February or March of 2018. The bathroom window is not designed to open. The Landlord never received complaints about the window in the bedroom not closing. The Tenant was provided a key to the garage December of 2017. Misuse of the door resulted in the friend being locked in the room. The Landlord was not aware of this issue.

Analysis

I have reviewed all the evidence submitted. Some of the email correspondence submitted by the Tenant is illegible due to the poor quality of the copy submitted. I have not looked at the prior files between D.B. and the Landlord. All of the evidence I find relevant to this matter relates to this tenancy and therefore what occurred between D.B. and the Landlord previously is not relevant in my assessment of this matter.

Section 7 of the *Act* states:

> 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.
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> (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.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenant as applicant who has the onus to prove the claim.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Loss of quiet enjoyment and unlawful entry

Section 28 of the *Act* states:

> 28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
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> (a) reasonable privacy;
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> (b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];

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

Section 29 of the *Act* states:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I understand the Tenant to be taking issue with the Landlord attending the rental unit and knocking on the door unannounced. I do not find this to be a breach of section 29 of the *Act*. The Landlord denied that he attended the rental unit unannounced. The text communications submitted show the Landlord asked the tenants prior to attending the rental unit. There is insufficient evidence that the Landlord ever entered the rental unit or property in breach of section 29 of the *Act*. The Tenant has not met his onus to show that the Landlord breached section 29 of the *Act*.

I accept that a landlord attending a rental unit and knocking on the door consistently, at unreasonable times or for unreasonable reasons could amount to a breach of section 28 of the *Act*.

The Tenant submitted his own outline of examples he is taking issue with.

The Tenant submitted a letter and email from his roommate about this issue. I do not place much weight on these given neither are signed by the roommate and the roommate did not attend the hearing to confirm she authored these or to provide testimony about the issues outlined.

I do not accept based on the evidence provided that the Landlord attended the rental unit unannounced consistently. Nor do I accept based on the evidence that the Landlord did this at unreasonable times, except for the one Sunday at 10:00 p.m. Nor do I accept based on the evidence that the Landlord did this for unreasonable reasons and in fact the evidence shows the Landlord attended to address issues at the rental unit and issues raised by the tenants.

The Tenant has not met his onus to prove the Landlord breached section 28 or section 29 of the *Act* in this regard and therefore I do not find the Tenant is entitled to compensation for this issue.

Loss/lack of services

Section 27 of the *Act* states:

> 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
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> (b) providing the service or facility is a material term of the tenancy agreement.
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> (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
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> (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
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> (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.

The parties gave conflicting testimony about the oven issue.

The documentary evidence includes the following. An email from the Tenant's roommate to the Landlord about the oven on November 15, 2017. I cannot read the entire email given the poor quality. A second email from the roommate to the Landlord dated November 21, 2017 about the oven not working. An email from the Landlord dated November 30, 2017 stating he is looking for parts for the oven and has provided a temporary one. A text from the Landlord dated February 21, 2018 stating the oven was fixed the day before. A further email from the Landlord in April of 2018 about the oven not working and expecting a part in May.

The evidence supports that the oven was not working properly from November of 2017 to May of 2018 with a brief period when it may have worked. I do not accept that the damage was caused by the tenants. The photos support that the oven was old. The Landlord appears to accept responsibility for fixing the oven in his communications with the tenants. The Landlord does not take the position in those communications that the damage was caused by the tenants and therefore their responsibility.

I accept that the Landlord provided a toaster oven to the tenants as this was undisputed. I find this reduces the impact of the oven issue on the tenants. However, a toaster oven is not the equivalent of having an oven and the Landlord should have done more to fix the oven sooner. I accept that the Landlord breached section 27 of the *Act* by failing to address the oven issue in a timely manner.

The Tenant testified that he loved to cook but did not provide evidence to show financial loss because of this issue. In the absence of a compelling basis to award more, I award the Tenant $50.00 per month for the months the oven did not work properly which I accept was six months. The Tenant is awarded $300.00 for the oven issue. In coming to this amount, I have considered that the Tenant still had other means of cooking food at the rental unit and had full use of the remainder of the rental unit to live and sleep in.

I do not accept that the Tenant paid more for utilities because the dryer was outside in the absence of any evidence to support this. The Tenant had use of the dryer up until around May 9, 2018. I do not find it necessary to determine whether the Tenant had access to the dryer from May 9, 2018 to May 16, 2018 as I do not accept that the Tenant would be entitled to compensation for lack of a dryer for eight days as I do not accept that there was any loss or any reduction in the value of the tenancy in this short period of time. I am not satisfied the Tenant is entitled to compensation for this issue.

Pest control

The Tenant has not submitted compelling evidence of a rat or mouse infestation in the rental unit during the tenancy. Further, the Tenant submitted evidence that seems to state this issue arose May 2, 2018 and not in February or March as the Tenant stated. The Tenant has not submitted evidence showing the tenants alerted the Landlord to this issue other than on May 15, 2018, the day before the tenancy ended. There is no compelling evidence about the cause of

this issue or extent of this issue. I am not satisfied the Landlord has breached the *Act* in relation to this issue and therefore I do not find the Tenant is entitled to compensation for it.

I note that I do not find the pest control documentation provided by the Landlord helpful as this relates to a period after the end of the tenancy.

D.B. pointed to evidence that he says supports the Tenant's position. I have reviewed this evidence and do not find that it does. Nor do I accept the evidence of D.B. that this was an issue from the outset of the tenancy in the absence of any evidence to support this and given it is contradicted by the Tenant and Tenant's evidence.

State of property

Section 32 of the *Act* states:

> 32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that
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> (a) complies with the health, safety and housing standards required by law, and
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> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
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> (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
>
> (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
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> (4) A tenant is not required to make repairs for reasonable wear and tear.
>
> (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.

In relation to the heating issue, the following documentary evidence was submitted. An email between the parties from November stating the tenants do not have heat. This appears to be dated November 21, 2017 although it is difficult to read given the quality. An email from the Landlord that the furnace was fixed November 30, 2017. Written notes from the Tenant stating there was no heat for three months. An email of the roommate to D.B. stating there was no heat for two months, October and November.

The Tenant did not provide much verbal testimony at the hearing about the heating issue. The documentary evidence is not clear and is contradictory as to when this was an issue. I accept based on the evidence that the heating was not working between November 21, 2017 and November 30, 2017. I accept that there was a breach of section 32 of the *Act* during this period.

The Tenant did not go into detail about how the lack of heating affected him or what loss or damage he suffered because of this issue. I award the Tenant $50.00 for the lack of heat from November 21, 2017 to November 30, 2017. I have considered the month this occurred in, how long it occurred for and the importance of heat in a rental unit in arriving at this amount. I have

also considered the lack of evidence from the Tenant about this issue and how it resulted in loss or damage to him.

I do not find the window in the bathroom being painted shut to be an issue. There is no evidence before me that a bathroom must or should have a window let alone a window that opens. I cannot find that the Landlord has breached the *Act* in this regard.

In relation to the black mold issue, the only evidence submitted that seems to support this is the May 15th letter from the roommate and email from the roommate to D.B. The letter states that the roommate documented the issue, yet no evidence of black mold in the bathroom has been submitted such as photos or a report by someone qualified to assess this issue. The roommate also states that she has documentation between the parties about this issue, yet this has not been submitted to me. In the absence of evidence of there being black mold in the bathroom, beyond the letter and email from the roommate, I am not satisfied the Landlord has breached the *Act* in this regard. Even if I did accept there was black mold, the Tenant has provided no evidence that he suffered any loss or damage as a result.

I do not find the window in the roommate's room to be an issue. The Tenant did not explain how this had any affect on him other than in relation to the pest issue which I have already addressed.

I do not find the Tenant's friend getting locked in a bedroom to be an issue that entitles the Tenant to compensation. I find this to be a very minor issue. There is no evidence about the cause of this issue. I cannot find that the Landlord has breached the *Act* in this regard.

In relation to access to the garage, I see in the communications submitted that the key was available for the tenants around November 9, 2017. This is stated by the Landlord in an email dated November 30, 2017. I did not understand the Landlord to dispute that the garage was part of the tenancy agreement. I accept that the tenants should have had access to the garage from the outset. I accept that the tenants did not have access from the start of the tenancy until November 9, 2017. The Tenant said at the hearing that this was not a big deal but would have been extra storage space. I award the Tenant $70.00 for the three and a half months when he did not have access to the garage. I arrive at this amount as I am not satisfied this was a significant issue for the Tenant and the Tenant still had use of the main part of the rental unit to live in.

D.B. brought up an issue of the roof leaking. The Tenant had not raised this issue during his verbal testimony. C.C. said the roof was repaired in February or March of 2018. I take from this that there was a leak. There is an email dated in April of 2018 about a leak in the documentary evidence; however, the Tenant did not point to this during the hearing and I do not know whether this relates to the same leak.

There is no compelling evidence submitted about a leak. The evidence does not give any details about the leak or the cause of it. D.B. referred to photos submitted. I do not find that any of the photos submitted show there is a leak in the roof or support the Tenant's position about this issue.

In the absence of further evidence about the leak, I am not satisfied the Landlord breached the *Act* and am not satisfied the Tenant suffered any loss or damage even if the Landlord did breach the *Act*.

As the Tenant was partially successful in this application, I award him reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to $520.00 and I issue the Tenant a Monetary Order in this amount.

Conclusion

The Tenant is entitled to a Monetary Order in the amount of $520.00 and I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 05, 2019

Residential Tenancy Branch