



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

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; and,
- reimbursement of the filing fee.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution and the tenant's evidence. The tenant acknowledged receipt of the landlord's evidence. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

During the hearing, the landlord was briefly disconnected from the hearing. I paused the hearing for a few minutes to provide the landlord an opportunity to reconnect with the hearing. The landlord successfully reconnected to the hearing after a few minutes and the hearing continued.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67?

Is the tenant entitled to reimbursement of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, I do not reproduce all details of the respective submissions and/or arguments in my decision. I reference only the facts that are relevant to my decision herein.

The tenancy started on July 1, 2017 with a one-year fixed term. The original rent was \$1,950.00 per month and the tenant paid a \$950.00 security deposit and \$950.00 pet damage deposit. The rent was later increased to \$1,975.00. The tenancy agreement stated that the tenancy included a refrigerator and use of an assigned parking space.

The tenant testified that it was difficult to park in his assigned parking space because a pipe ran horizontally along the side of the parking space which made it difficult to open the vehicle doors. The tenant complained about the difficulty parking and the landlord took the concerns to the building strata management. However, the landlord was unable to resolve the issue. The tenant started parking in another space instead of his assigned parking space.

The tenant parked in the alternate parking space without issue until July of 2018 when he began receiving complaints from the strata management. The tenant contacted municipal officials and he was advised that the position of the pipe was not compliant with city by-laws. The landlord was unable to find an alternate parking space or remove the pipe from the parking space.

The tenant presented a complaint from the strata management company dated August 10, 2018. This complaint stated that the tenant was improperly parking his vehicle in a manner in which the front of the tenant's vehicle protruded into the driving lane in the parking garage. The complaint letter included a photograph of the tenant's vehicle parked in the parking space. The photograph does show a pipe running along the edge of the tenant's parking spot. However, it is impossible to tell if the parking space is large enough to accommodate the size of the tenant's vehicle because the tenant is parked over the dividing line into the neighbouring parking space in the photograph. The tenant did not provide any measurements of the size of the parking space, his vehicle or the amount of clearance.

The tenant claimed compensation of \$2,335.20 for the parking space. The tenant calculated this demand based upon the building's parking cost of \$145.95 month for 16 months.

The tenant complained that the refrigerator was non-functioning when he moved into the unit. The tenant testified that the refrigerator was not cold enough to store food. The refrigerator also had a water leak which damaged the floor. The tenant testified that the refrigerator still was not cold enough after the leak was repaired.

The tenant's first documented complaint regarding the refrigerator temperature was during a recorded conversation on May 1, 2018. The tenant sent the landlord another complaint about the refrigerator on June 28, 2018. The landlord provided the tenant with small, temporary refrigerator on July 7, 2018 and a full replacement refrigerator was provided on July 14, 2018.

The tenant testified that he needed to eat out each day because he could not store groceries in the house. The tenant requested compensation of \$7,600.00 for loss of use of the refrigerator. The tenant calculated this amount as \$20.00 per day for extra food expenses for 380 days.

The tenant also complained about the condition of the floor tiles. The tenant complained that some of the tiles extruded up approximately one inch from the floor. The tenant testified that this constituted a safety hazard. Further, the tenant testified that a guest tripped over the extruding tiles and fell over.

The tenant complained to the landlord about the floor tiles on November 26, 2017. The landlord told the tenant that she was out of the country and she advised the tenant to speak with the builder. The floor tiles were repaired on March 1, 2018.

The tenant claimed compensation of \$1,425.00 for the damaged floor tiles. The tenant calculated this demand based upon a requested \$285.00 per month rent reduction over five months.

The tenant also requested compensation of \$3,070.00 for loss of quiet enjoyment. The tenant testified that this claim was based on the inconvenience caused by the parking issues, the refrigerator issues and the tile issues. The tenant calculated this demand based upon a requested 10% rent reduction throughout the duration of his tenancy.

The tenant testified that he moved out of the rental unit in October 2018 because he was unable to continue residing in the property without adequate parking. The tenant claimed one month of rent, less the parking cost, of \$1,829.50 as compensation for having to move out of the property. The landlord testified that the tenant chose to move out of the rental unit.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the applicant, in this case the tenant, to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Section 65(1)(c) and (f) of the *Act* states:

Director's orders: breach of Act, regulations or tenancy agreement

65 (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the *Act*, the regulations or a tenancy agreement, the director may make any of the following orders:

- (c) that any money paid by a tenant to a landlord must be
 - (i) repaid to the tenant,
 - (ii) deducted from rent, or

(iii) treated as a payment of an obligation of the tenant to the landlord other than rent...

Section 65 of the *Act* allows me to issue a monetary award to compensate the tenant if I determine that there has been non-compliance with the *Act*, regulations or a tenancy agreement. The tenant has requested compensation for multiple deficiencies in the rental unit which the tenant contends have reduced the value of the tenancy agreement. Each of the tenant's claims are addressed as follows:

Refrigerator

The tenancy agreement explicitly included the tenant's use of a refrigerator. Based on the tenant's undisputed testimony, I find that the refrigerator was not functioning properly until it was replaced in July 2018. Based upon the testimony of the parties, and the confirming audio recording, I find that the tenant complained of the refrigerator temperature on May 1, 2018. Further I find that the landlord did not take any steps to repair or replace the refrigerator until the tenant complained about the refrigerator again on June 28, 2018. However, I find that the landlord did take reasonable and prompt measures to redress this issue by providing a temporary refrigerator and a permanent replacement after the tenant's complaint on June 28, 2018.

Accordingly, I find that the tenant is entitled to a rent reduction for the loss of the use of the refrigerator for the months of May 2018 and June 2018. I find that a reasonable valuation of tenant's loss of use of the refrigerator is 5% of the monthly rent. Accordingly, I award the tenant \$197.50 (5% of monthly rent of \$1,975.00 for two months) for loss of use of the refrigerator.

Parking

I find that the tenant has not provided sufficient evidence to establish that the assigned parking space was inadequate. The tenant has not provided any measurements of the parking space or the amount of clearance around his vehicle. The tenant did provide a message from a city employee stating that the position of the pipe was not in compliance with city bylaws. However, I find that this is not sufficient evidence to establish that the parking space was inadequate. Accordingly, I dismiss the tenant's claim for compensation for loss of use of the parking space.

Tiles

The tenant has provided sufficient evidence to establish that the floor tiles were damaged. I find that the tenant complained of the tile damage on November 26, 2017 and the tiles were not repaired until March 1, 2018. Accordingly, I find that the tenant is entitled to a rent reduction for the loss of the use of the space around the floor tiles for the months of December 2018 and January 2019. I find that a reasonable valuation of tenant's loss of use of the refrigerator is 1% of the monthly rent. Accordingly, I award the tenant \$39.50 (1% of monthly rent of \$1,975.00 for two months) for loss of use of the tiles.

Quiet Enjoyment

The tenant seeks \$3,070.00 in compensation for the breach of his quiet enjoyment. As per section 28 of the *Act*, a tenant's entitlement to quiet enjoyment includes rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit and of the common areas for reasonable and lawful purposes, free from significant interference.

Pursuant to the Residential Tenancy Policy Guideline #6 "Right to Quiet Enjoyment" a tenant's right to quiet enjoyment may be breached by frequent and ongoing interference or unreasonable disturbances. Situations in which the landlord directly caused the interference and situations in which the landlord was aware of the interference and failed to take reasonable steps to rectify it would constitute a breach.

The tenant claimed that the difficulties he experienced with the refrigerator, the tile floor, and the parking constituted a substantial interference with his quiet enjoyment of the property. However, I find that this claim is merely duplicative of tenant's claim for rent reduction based upon the same issues which are stated above. I find that the tenant has not presented any evidence of interference with the tenant's quiet enjoyment separate from the tenant's claim for rent reduction stated above. Accordingly, I dismiss the tenant's claim for compensation for loss of quiet enjoyment.

Since the tenant has generally prevailed in this matter, I grant the tenant's request for reimbursement of the filing fee.

Accordingly, I grant the tenant a monetary order of \$337.00, calculated as follows:

<u>Item</u>	<u>Amount</u>
Refrigerator	\$197.50
Tiles	\$39.50
Reimbursement of filing fee	\$100.00
Total	\$337.00

Conclusion

I grant the tenant a monetary order in the amount of **\$337.00**. If the landlord fails to comply with this order, the tenant may file the order in the Provincial Court to be 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 *Residential Tenancy Act*.

Dated: April 10, 2019

Residential Tenancy Branch