Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"):

- to cancel a One Month Notice to End Tenancy for Cause dated January 20, 2019, ("One Month Notice");
- for a monetary claim of $9,800.00 for money owed or compensation for damage or loss under the Act, regulation and/or tenancy agreement; and
- to recover the cost of his filing fee.

The Tenant and the Landlords, V.P. and C.P., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing, the Tenant and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution and/or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had had time to review it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

The Tenant said that he moved out of the rental unit on March 10, 2019, so he was no

longer disputing the validity of the One Month Notice. The Tenant was still seeking compensation for monetary loss or other money owed to him by the Landlord, as well as recovery of the $100.00 filing fee. As a result, the Tenant's application to cancel the One Month Notice is dismissed without leave to reapply.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recover the cost of his filing fee in this Application?

Background and Evidence

The Parties agreed that the tenancy began on February 15, 2017, with a monthly rent of $1,800.00, and that the Tenant paid the Landlord a security deposit of $900.00, and no pet damage deposit. As noted above, the tenancy ended on March 10, 2019, when the Tenant moved out of his own accord. The Landlords must handle the return of the security deposit in accordance with the Act.

Peace and Quiet

The Tenant said that when his family moved into the home, the Landlord informed them that he would be building a suite in the backyard, which would be complete in the fall of 2017. The Tenant said: "It's still going on today and for 25 month now…. There are trucks coming and going, saws and hammers starting at 8 a.m., almost every day of the week. It could be on a Saturday or Sunday – this goes to the peace and quiet part of the Application."

The Landlord said that when they were discussing a tenancy, he told the Tenants he would be building a garage at the back and that the Tenants would have no access to the backyard. The Landlord said: "This was in an addendum that they signed and agreed to. I never told them how long it would take. With construction, you never know how long it will take."

The Tenant uploaded a copy of the tenancy agreement, which has an Addendum that includes:

. . .

9. No access to backyard during construction.
10. Parking for all tenants is at the front of the house.

This Addendum was signed by the Landlords and the Tenant, C.M.

The Landlord also said: “First of all, construction took longer, but it wasn’t seven days a week and it was pretty quiet, so I don’t know what he was talking about. We never received any complaints about being noisy from anyone.”

On his Monetary Order Worksheet, the Tenant claimed $200.00 per month for 18 months of the tenancy for a total of $3,600.00 for loss of quiet enjoyment.

Back Stairs

The Tenant said that when they moved in, there was a back stairway coming off of the home into the backyard. But he said: “a wooden board was used to connect the back door to the stairs. It was dangerous. My Mom’s over there looking after my kids and she’s 76 years old. I have kids and one doesn’t have a leg. Basically you can’t get out of the house if there was fire unless you go out the front door.”

The Landlord said: “The stairs in the back were unsafe, so I took it out and I sent you a picture. The deck is only about 4 – 5 feet from the ground. You can jump. They never said anything to me about that being a concern. [V.P.] said she wasn’t made aware of that either.”

The Landlord submitted photographs of the back of the rental unit showing a back deck with a railing around the edge and no stairway to the ground. The Tenant said that “the Landlord said it’s a five foot drop onto grass, but there isn’t any grass there. It’s not five feet, as you can see from the door that’s there.” The photograph shows a door at ground level leading to space beneath the deck of the rental unit. The Tenant said “It’s seven feet, six inches to the ground, and from the railing it is ten feet ten inches. You’d have to go over the railing at a height above the ground of ten feet, ten inches.”

The Landlord said, “First of all that’s a midget door. And it’s not what he said it is. Three storey apartment blocks don’t have fire escapes. If they had expressed this I would have put in a ladder there.”

In his Monetary Order Worksheet, the Tenant claimed $100.00 per month for 18 months for having no back stairs and no second fire exit for a total of $1,800.00.

Leaky Roof

The Tenant said that the roof in the living room leaked. He said:

> The Landlord did put effort into fixing the leak on the outside of the house - installing a temporary flashing - but the inside was never addressed. You can see some of my pictures of the stains. The one big bar is ripped apart and it looks like there's black mould growing inside it. The light fixture – there was water coming out of that, so I turned it off and took out the light bulb. There was a beam – the white, large beam has paint hanging off of it. The whole beam is wet. And then there's the stain on the ceiling. The outside was addressed; it did stop pouring in, but the inside was never fixed.

The Landlord said: "I'm a little bit upset, because when he told me there was a leak on the place, I got someone there right away. I wasn't aware that it was like this. When they told me there was a leak, I got right there. See the roofer bill. I did this in May and December – got there twice. I called someone right away. [V.P.] said she was never made aware of this."

The Tenant said, "I actually sent [C.P.] a picture of that beam to let him know what it looked like and that there was water all over that beam. I don't know the exact date, but I want to say the fall of 2018 when we had all that rain. I sent the picture through the cell phone – text." The Landlord said that he never received these pictures.

On his Monetary Order Worksheet the Tenant claimed $200.00 per month for four months for the "mouldy ceiling from leaks, unhealthy," for a total of $800.00.

House Heat

The Tenant said:

> There isn't any heat in the house. I informed [the Landlord] in the fall of 2017 when it got cold and he did send a guy over to do something to the furnace. But it never changed the heat upstairs. It blew air, but it was cold. I told him it didn't work. He said it was probably the thermostat, and I said it probably was. I went and bought a thermostat and turned it on, but the exact same problem – it blew cold air. So I turned the thermostat off.
>
> The Landlord said he sent a text to the tenant downstairs and she said that the

heat was on, but the thermostat has been off for a very long time, so I didn't know how she was getting heat.

The Landlord said the Tenant: "did mention it to me and I did call someone over. The guy said the heater was fine, was working. I called [the downstairs tenant] to find out. She had it on, so I don't know why it wasn't working upstairs. If he had said it was not working that long…. I don't know where you're come from. I have the hydro bills to show that heat was on."

The Tenant said there were two gas fire places that he used, but that the bedroom end of the house was always very cold.

In his Monetary Order Worksheet, the Tenant claimed $200.00 per month for 13 months for the lack of heat in the rental unit, for a total of $2,600.00.

No Dryer

The Tenant said the dryer was replaced, but that it took a long time for the Landlord to do this. The Tenant said that before it was fixed the Landlord told them to use the dryer in the downstairs rental unit; however, the Tenant said: "I didn't want to get in the way of downstairs tenants."

On the tenancy agreement, the term "Laundry" is checked as being included in the rent. The Tenant claimed $100.00 per month for six months for the absence of a dryer, for a total of $600.00.

No Oven

The Tenant said that the oven "went out" and then the Landlord arranged for another one, and then the second oven went out and another came in. The Tenant said the Landlord "did fix the striker, but it took way longer than a week. Four months is an approximation of what it was from the start to the finish without a properly working oven."

The Landlord acknowledged that the oven broke down. "I changed the striker… it wasn't four months; maybe a week, max. I'm a hands-on guy; I fix everything. If somebody makes me aware of something I fix it."

In his Monetary Order Worksheet, the Tenant claimed $100.00 per month for four

months to compensate for being without a properly working oven, for a total of $400.00.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party who applies for monetary compensation against another party has the burden to prove their claim on a balance of probabilities. Awards for compensation are provided under sections 7 and 67 of the Act. Further, Part C of Policy Guideline # 16 sets out a test that a party must follow who is claiming compensation for damage or loss. This test requires an applicant to prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

(the “Test”)

In this instance, the burden of proof is on the Tenant to prove the existence of the damage or loss and that it stemmed directly from a violation of the Act, regulation, and/or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, the Tenant must prove that what they did about the damage or loss was reasonable and aimed at minimizing or mitigating the damage or losses incurred.

Where 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.

Peace and Quiet

Section 28 of the Act sets out a tenant’s right to quiet enjoyment of a rental unit:

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

This is clarified by Policy Guideline #6, ("PG #6"), which includes:

> **B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**
> 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 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 entitlement to 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.
>
> In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.
>
> A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.
>
> **Compensation for Damage or Loss**
> A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

> A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.
>
> [emphasis added]

The evidence before me is that at the start of the tenancy, the Parties agreed that the Tenants would not have access to the backyard, because of the planned construction. The Tenants knew that construction was to happen behind the rental unit. However, based on the evidence before me, I find it more likely than not that the construction work happened seven days a week at times and went on much longer than anticipated. I find this meets the first stage of the Test.

The Tenant did not specify the impact of the construction noise on the family. For instance, there was no indication that anyone's sleep was affected by it or that any family members were home during the day when the noise would occur. The Tenant did not indicate how often the construction noise occurred on weekends – rather, the Landlord said that it did not happen seven days a week. Further, the Tenant did not indicate the basis for his monetary claim.

I find it reasonable to balance the Tenants' loss of quiet enjoyment with the fact that they knew construction would be ongoing at least until "the fall" or for approximately the first eight months of the tenancy. However, the Landlord did not dispute that the construction noise was ongoing throughout the entire 25 months of the tenancy.

I find that the Tenant has established that the Landlord breached section 28 of the Act and PG #6 by the undisputed evidence that construction work was ongoing during the entire tenancy. I find it reasonable to infer from the evidence before me and common sense and ordinary human experience that construction noise this close to a residential property would be an intrusion warranting compensation for loss of quiet enjoyment. I find this meets the second stage of the Test.

The Tenant valued the loss of quiet enjoyment at $200.00 per month or approximately 11% of the monthly rent. The evidence before me is that the tenancy ran from February 15, 2017 until March 10, 2019 or a little over 25 months. The Tenant claimed for compensation for 18 of the 25 months for a total of $3,600.00. By not claiming the full 25 months of the tenancy, I find the Tenant has reasonably reduced the claim to represent the time during which he had quiet enjoyment of the rental unit. I find that this equates to mitigating the damage claimed. If the construction was estimated to last until

the fall of 2017, I find it reasonable to equate this to mid-October 2017. Therefore, the time beyond that date until the tenancy ended was a year and five months or 17 months. I therefore award the Tenant $200.00 per month for 17 months or **$3,400.00** for loss of quiet enjoyment.

Back Stairs

The Tenant claimed he suffered a loss, because of a lack of stairs off the back porch. He said this represented a lack of a second fire exit; however, the Tenant signed the Addendum to the tenancy agreement, which states that the Tenants would have no access to the backyard during construction, which was ongoing throughout the tenancy.

The Tenant did not refer to a bylaw or other authority setting out that a back exit is required in a rental unit of this type. I find that the Tenant has not met the first stage of the Test that the Landlord violated the Act, regulation or tenancy agreement, so I dismiss this aspect of the Tenant's Application without leave to reapply.

Leaking Roof

The evidence before me is that the Landlord fixed the leaks that occurred in the roof, as soon as possible. However, the Tenant claims that the Landlord did not repair the internal damage to the rental unit caused by the leaking roof.

Policy Guideline #1 sets out landlords' and tenants' responsibilities for residential premises:

1. This guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities.

.

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet 'health, safety and housing standards' established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain 'reasonable health, cleanliness and sanitary standards' throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or

> his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
>
> Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.
> **. . .**
> [emphasis added]

Upon reviewing all the evidence before me in this matter, I find that the inside of the rental unit was not repaired after the leaks to the roof. I find that the ceiling stains were cosmetically unappealing and that they represent a violation of Policy Guidelines 1 and 16. However, I find it undisputed that the Landlord behaved responsibly in immediately addressing other maintenance issues about which the Tenant informed him. As a result, I find it more likely than not that the Tenant did not, in fact, communicate this matter to the Landlord. I find on a balance of probabilities that the Landlord would have addressed this issue, if he had known about it and that the Tenant did not, thereby mitigate the damage. Accordingly, I dismiss this aspect of the Tenant's application without leave to reapply.

House Heat

The Tenant's evidence is that there was heat in the rental unit from two gas fire places; however, this heat did not reach the bedroom area of the rental unit. I note that the section of the tenancy agreement which sets out what is included in the rent payment has a check box beside "heat"; however this box is not checked. I find this indicates that the Parties agreed that heat was not a service or facility that was intended to be included in the monthly rent, so it was not a breach by the Landlord pursuant to the first stage of the Test. The Tenant could have purchased area heaters for the bedroom area of the house, if the other heat sources did not work. I find he did not mitigate his loss here. Overall, I find that the Tenant did not establish that the Landlord breached a section of the Act, regulation or tenancy agreement with this claim, so I dismiss it without leave to reapply.

No Dryer

In terms of the dryer, I find that the Tenant established that the Landlord breached the tenancy agreement by not providing a service or facility, which he had agreed to provide. The Tenant did not indicate how much it cost to replace this service nor did he explain the level or timeframe of inconvenience this entailed. I find that the Tenant's claim for $100.00 per month as to the cost incurred without documentation is insufficient to meet the test set out above. I award a nominal amount of **$100.00** for the absence of this service, pursuant to Policy Guideline #16.

No Oven

The Tenant said that the Landlord replaced subsequent ovens that were installed in the rental unit and failed to work. The Tenant said he approximated the amount of time that they were without an oven at four months; however, the Landlord said it was closer to a week – maximum.

In his Monetary Order Worksheet, the Tenant claimed $100.00 per month for four months as compensation for being without a properly working oven, for a total of $400.00.

The Tenant was admittedly unsure how long they were without the use of an oven. Further, he did not provide any evidence about the financial impact of the loss of use of this appliance. I find that it is more likely than not that his claim of $100.00 per month is as much an approximation, as his estimate of how long they were without the oven. Given the Landlord`s evidence that the time without an oven was closer to a week than four months, I find it reasonable to give a nominal award between the two positions. I award **$100.00** for the loss of use of the oven. In addition, if they have not returned it yet, the Landlords must handle the return of the security deposit in accordance with the Act.

I find that the Tenant's Application has some merit and, therefore, that the Tenant is entitled to recovery of the **$100.00** filing fee paid for this Application.

Conclusion

The Tenants have established a monetary claim of $3,700.00, which includes $3,400.00 for a loss of quiet enjoyment, $100.00 for the lack of a dryer and $100.00 for going without an oven. I also award $100.00 for recovery of the cost of the filing fee for a total

monetary order of **$3,700.00**.

The Tenants are granted a monetary order pursuant to section 67 of the Act, for $3,700.00. Should the Tenants require enforcement of the monetary order they must first serve the Landlords with the order, and then the monetary order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

Although this decision has been rendered more than 30 days after the conclusion of the proceedings, section 77(2) of the *Act* states that the Director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period set out in subsection (1)(d).

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 17, 2019

Residential Tenancy Branch