



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 damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlords, their agent and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she served the landlords with her application for dispute resolution on February 7, 2019 via registered mail. The landlords confirmed receipt on February 8, 2019. I find that the landlords were served with the tenant's application for dispute resolution in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2013 and ended on November 30, 2018. Monthly rent in the amount of \$1,078.48 was payable on the first day of each month. A security deposit of \$500.00 and a pet damage deposit of \$500.00 were paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that a move in condition inspection report was completed and signed by both parties on October 31, 2013. The move in condition inspection report was entered into evidence. Both parties agree that a move out condition inspection report was completed and signed by both parties on November 30, 2018. The move out condition inspection report was entered into evidence.

The tenant is seeking the following damages arising out of this tenancy:

Item	Amount
Labour for carpet install	\$60.00
Cost of new carpet	\$140.00
Cost of heat loss	\$3,000.00
Compensation for labour to clean mold around skylight	\$100.00
Cost of paint and labour for painting	\$400.00
Compensation for labour to cut the lawn	\$1,000.00
Compensation for loss of parking spot	\$255.00
Compensation for second hand smoke	\$1,000.00
Loss of rent from roommate	\$1,200.00
Loss of quiet enjoyment	\$4,600.00
Total	\$11,755.00

Carpet

The tenant testified that the carpet in the front foyer did not have a vinyl overlay and got worn out. The tenant testified that she verbally asked the landlord to replace the carpet and he refused. The tenant testified that she purchased new carpet for the area for approximately \$140.00 and hired a handyman to install it which cost \$60.00. The tenant entered into evidence the handyman receipt dated September 28, 2017 but did not have a receipt for the carpet itself. The tenant testified that she did not provide the landlord with copies of the receipts or request reimbursement in writing.

The landlord's agent testified that the carpet in the foyer was in good condition when the tenant moved in and did not require replacing. The move in condition inspection report states that the carpet was in good condition. The landlord's agent testified that the tenant had four cats and a dog and it was the tenant's pets which damaged the carpet.

Heat Loss

The tenant testified that one room in the subject rental property did not have any form of heat and that the rest of the subject rental property was heated by a combination of propane and baseboard heaters. The tenant testified that the unheated room measured 12 ft by 12 ft and she could never get it to warm up in the winter. The tenant testified that she is claiming \$1,500.00 for loss of living space for the five winter months. The tenant testified that she is also claiming \$1,500.00 for lack of heat and inefficient use of tenant purchased propane for six winter months per year at a rate of \$50.00 per month for five years.

The tenant testified that during her first winter at the property the tenant asked the landlord to fix the heat and he refused. The tenant testified that she did not request the landlord to fix the heat in writing or make an application to the residential tenancy branch to have the landlord fix the heating.

The landlord's agent testified that the house is open concept and that while the room in question does not have baseboards, it is adequately heated by the propane heater and baseboards located in adjacent rooms.

Skylight

The tenant testified that one of the skylights at the subject rental property had a crack in it which resulted in mold growing around the skylight. The tenant testified that she had to spent time cleaning the mold. The tenant is seeking \$100.00 from the landlord for her time spent cleaning the skylight. The tenant testified that she did not ask the landlord in writing to repair the skylight.

The landlord's agent testified that the skylight was not cracked, and the tenant never provided the landlords with a written request for repair. The landlord's agent testified that it was the responsibility of the tenant to keep the inside of the skylight clean. The landlords entered into evidence a photograph of the skylight. The tenant testified that a mark on the skylight was the crack. The landlord's agent testified that it was bird poop. It is not possible to determine from the photograph what the mark is.

Paint and Labour

The tenant testified that the walls required painting when she moved in and the landlord refused to paint them, so she purchased paint and painted the walls herself. No receipts were entered into evidence nor did the tenant provide a time estimate for the time she spent painting. The tenant entered into evidence a photograph of a light fixture with uneven paint surrounding it. The tenant testified that she did not make a written request to the landlord to re-paint the subject rental property.

The landlord testified that the walls were in good condition when the tenant moved in. The move in condition inspection report states that the walls were in good condition when the tenant moved in.

Lawn Cutting and Parking Spot

Both parties agree that the addendum to the tenancy agreement states that the tenant agrees to water and mow the lawn.

Both parties agree to the following facts. At the beginning of the tenancy the landlords showed the tenant what lawn she was required to cut. In June of 2017 the tenant learned that part of the lawn she had been cutting was the lawn of the neighbouring

property. The tenant stopped mowing the lawn in June of 2017 upon this discovery. The tenant is seeking \$1000.00 for time spent cutting the neighbouring property's lawn.

Both parties agree that the tenancy agreement states that parking for 2 vehicles is included in the rent. The landlord's agent however, noted that while the number 2 is written in on the tenancy agreement, the box itself is not checked off.

Both parties agree that in June of 2017 the landlords asked the tenant to stop parking in one of the parking spots they had been designated and asked the tenants to park on the street. The tenant is seeking \$255.00 for the loss of the parking spot.

The landlord's agent testified that the tenant was permitted to park in the designated parking spot as long as she mowed the lawn and that it was fair that the tenant stopped mowing the lawn when the landlords asked the tenant to stop parking in the designated spot. The tenant denied this agreement.

Second Hand Smoke

The tenant testified that a tenant in a suite below her smoked and that this smoke entered into the subject rental property making it difficult for her to breathe and sleep. The tenant testified that she told the landlord about this problem on numerous occasions but only via e-mail on one occasion. The tenant testified that she did not make any further complaints after the e-mail complaint because she did not believe her complaints would be addressed.

The landlord's agent testified that upon receipt of the tenant's written complaint a warning letter was sent to the smoking tenant. The warning letter was entered into evidence. The landlord's agent testified that the landlords did not receive a further complaint about the smoking and so believed the problem was resolved. The landlord's agent denied that the tenant made verbal complaints to the landlord.

Loss of Rent from Roommate

The tenant testified that throughout her tenancy she had a roommate. The tenant testified that on one occasion in June of 2017 a 20 year old man (the "roommate") was renting a room from her and landlord E.F. blocked the roommate's car from leaving and

yelled at the roommate to get off his property. The tenant testified that the roommate moved out at the end of June 2017 due to the harassment of landlord E.F. The tenant testified that the roommate paid \$600.00 per month. The tenant is seeking two months loss of rent in the amount of \$1,200.00.

The landlord's agent testified that the tenant never sought permission to have a roommate. The landlord's agent testified that the roommate told landlord E.F. that he had prior plans to leave at the end of June 2017 and that the altercation which occurred with landlord E.F. was not the reason he was leaving. The landlord's agent testified that the tenant has not proved the rental rate paid by the tenant and did not believe it would have been \$600.00 per month considering rent for the entire suite was just over \$1,000.00.

Loss of Quiet Enjoyment

The tenant testified to the following facts. Early in 2016 her relationship with landlord E.F. soured and that weird things started happening. The landlord frequently entered onto her private deck via a ladder and took photographs of things on her deck. On one occasion, landlord E.F. was on her balcony and called her out to the deck. The landlord started yelling at her about a small crack in the deck claiming that she was not taking care of the deck. The tenant was uncomfortable with this and went inside and landlord E.F. followed her.

The tenant testified to the following facts. From early 2016 onwards, landlord E.F. would pick at every occurrence, finding fault with the tenant for things such as deer eating trees and dogs urinating on the lawn. On one occasion the landlord banged on her door and yelled at her for making her yard look like a pig sty. The tenant started to cry so she slammed the door in the landlord's face. The landlord would call every other day over nothing making her tenancy very uncomfortable.

The landlord's agent testified that landlord E.F. is in his 70s and is 5'8 and not an intimidating person. The landlord's agent testified that landlord E.F. did not yell at the tenant and only entered onto her deck to complete standard maintenance. The landlord's agent testified that the landlord did not yell at her on the deck and follow her into the subject rental property.

The landlord's agent testified that the relationship between landlord E.F. and the tenant was not perfect but that both parties were responsible for the acrimonious relationship. The landlord's agent testified that landlord E.F. did not act in a threatening manner to the tenant. The landlord's agent testified that whenever the tenant provided a written request for repairs the request was completed.

Analysis

Carpet and Painting

Section 32 of the *Act* states that 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.

If the landlord does not comply with section 32 of the *Act*, the tenant(s) may file an application for dispute resolution to have the landlord complete any required repairs. In this case, the tenant did not file an application with the residential tenancy branch for repairs to be completed. I find that the remedy available to the tenant, for claims of needed repairs, was not availed by the tenant.

I find that the tenant cannot then, after failing to seek appropriate remedy under the *Act*, seek a monetary award from the landlord for repairs the tenant chose to complete herself. Based on the above, I dismiss the following of the tenant's claims:

Item	Amount
Labour for carpet install	\$60.00
Cost of new carpet	\$140.00
Cost of paint and labour for painting	\$400.00

Heat Loss and Loss of Rent

Policy Guideline 16 states that 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:

- 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.

I find that the tenant has failed to prove the amount of or value of the following claims for damages:

Item	Amount
Cost of heat loss	\$3,000.00
Loss of rent from roommate	\$1,200.00

The tenant did not provide any evidence to support her quantification of heat loss amounting to \$1,500.00. The tenant did not enter any evidence to support her claim that the roommate paid \$600.00 per month in rent or that the tenant attempted to mitigate her damages by finding a new roommate.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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. The onus to prove their case is on the person making the claim.

I also find that the tenant has failed to prove that the room without baseboards could not be adequately heated by the other heaters in the subject rental property.

Based on the above, I dismiss the tenant's claims for loss of rent from her roommate and the cost of heat loss/ loss of usable space.

Skylight

Residential Tenancy Policy Guideline 1 states that the tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould.

I find that the tenant has failed to prove, on a balance of probabilities, that the skylight was cracked or that an unreasonable amount of mold resulted from this crack. I find that it was the tenant's responsibility to clean any mold growth on the inside of the skylight. Based on the above I dismiss the tenant's claim for compensation regarding the skylight.

Lawn Cutting and Parking Spot

I find that the tenancy agreement stated that 2 parking spaces were included with rent. While the box was not checked, I find that the presence of the hand written 2 clearly indicates that the intention of both parties was that two parking spaces were to be included with rent.

I find that the tenancy agreement addendum states that the tenant is required to mow the lawn. I find that at the beginning of the tenancy the landlords showed the tenant the lawn that was referred to in the tenancy addendum and that the tenant agreed to cut that lawn. I find that the fact that a portion of that lawn was the neighbouring property's does not change the nature of the agreement between the parties or the tenant's responsibility to mow it. Only the tenant's perception of the fairness of the agreement changed, but her obligation to complete the lawn mowing did not.

Section 27(2) of the *Act* states that a landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
- (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.

I find that the landlord breached the *Act* by taking away a parking space from the tenant and not reducing the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement.

I find that the tenant breached the tenancy agreement by failing to cut the grass as agreed upon at the beginning of the tenancy.

I find that the value of the breaches of each party are roughly equivalent and offset the other. I find that neither party is entitled to a Monetary Order for the above breaches.

Second Hand Smoke and Loss of Quiet Enjoyment

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (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.

Residential Policy Guideline 6 states that 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.

I find that the landlord responded reasonably to the tenant's written complaint about her neighbor's second-hand smoke. I find that the landlord issued a warning letter about smoking in the unit to the neighbor below the tenant. I find that since the tenant did not follow up with the landlord or make any further written complaints, the landlord was not

put on notice that a continuing problem existed or required further steps to resolve. I therefore dismiss the tenant's claim for damages arising out of second-hand smoke.

I find that the tenant has failed to prove that the landlord unreasonably disturbed her or gained access to her balcony for reasons other than maintenance. I find that it is clear that the relationship between the parties is acrimonious, but the tenant has not established that this acrimony is solely attributable to the actions of the landlord. I find that the conduct of the parties likely jointly contributed to the hostile relationship. Based on the above I dismiss the tenant's application for loss of quiet enjoyment.

Filing Fee

As the tenant was not successful in her application, I find that she is not entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*.

Conclusion

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: May 28, 2019

Residential Tenancy Branch