



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlords for the cost of the application.

The hearing did not conclude on the first date scheduled and was adjourned to continue. My Interim Decision was provided to the parties.

Both named landlords and an agent for the tenant attended the hearing on both scheduled dates, and the tenant's agent gave affirmed testimony on the first scheduled date. However, the landlords had not been given an opportunity to question the tenant's agent in the time provided for the hearing.

At the commencement of the second day of the hearing, the tenant's agent stated that she had raised an objection in writing to an oral hearing with the Residential Tenancy Branch. The tenant's agent has suffered a stroke and a request states: "(the tenant and agent) respectfully request the reading of submitted evidence in tandem with my telephone attendance." The tenant's agent suggested that the parties be permitted to provide written submissions and evidentiary material and, as provided in the Rules of Procedure:

6.4 A party may request that the hearing be held in a specific format

A party may submit a request that a hearing be held in a format other than telephone conference call.

A party must submit such a request in writing with supporting documentation within three days of receiving the notice of hearing.

6.5 Opportunity to be heard on a request for a specific format

When a party requests that a hearing be held in a format other than the one set by the Residential Tenancy Branch, the Residential Tenancy Branch will give the other party an opportunity to make submissions on the format of the hearing.

The tenant's agent objected to the hearing continuing by conference call and requested that a written format as originally submitted be accepted as the Applicant's submission. Due to her health issues, the tenant's agent became very confused at the first hearing date; evidence got mixed up and she submitted that it should be re-considered and that she be permitted to provide new written submissions to replace the testimony given on the first scheduled date. Further, the format in which evidence has been uploaded to the Residential Tenancy Branch dispute resolution computer system is confused and specific documents are difficult to locate.

One of the landlords objected, stating that the tenant's agent had been heard, and the landlords want an opportunity to also be heard.

I refused the application of the tenant's agent to discontinue with the hearing or to strike any of her testimony, having found that the landlords objected and would be prejudiced if they were not also given the opportunity to be heard. I further found the testimony of the tenant's agent to be focused and explicit enough and in conjunction with the evidence provided, and that the tenant would not be prejudiced by the oral hearing continuing. I assured the parties that whether or not the evidentiary material has been uploaded in order or named appropriately, I am able to open each document and would consider all of the evidence.

No further issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of quiet enjoyment and for the landlords' failure to make repairs to the rental unit?

Background and Evidence

The tenant's agent testified that this fixed term tenancy began on February 1, 2016 and expired on January 31, 2017 thereafter reverting to a month-to-month tenancy which ended on October 31, 2018. Rent in the amount of \$650.00 per month was

payable on the 1st day of each month, which was raised to \$702.00 per month effective June 1, 2018 and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$325.00, and \$225.00 of that was returned to the tenant as a result of a previous hearing wherein the landlords were ordered to retain \$100.00. No pet damage deposit was collected. The rental unit is a suite within a 4-plex, and a copy of the tenancy agreement has been provided for this hearing.

The tenant's agent further testified that on September 18, 2017 the tenant told the landlords that heat was intermittent, which was not repaired until July 15, 2018. No heat was functioning in the kitchen or living room, and the tenant used a fan to disperse heat, but there is no insulation in the kitchen and living room, so the areas were very cold. There was excessive warmth in other areas of the rental unit, and the tenant used fans to disperse it. Emails were exchanged between the tenant and the landlords commencing September, 2017. On February 26, 2018 the tenant gave a written request to the landlords to have the baseboard heaters and thermostat repaired. The landlords' response was that an electrician had been to the rental unit and the landlords were not going to send one again. However, sometimes there was no communication from the landlords, and the electrician didn't have a Work Order to make the repair.

The parties had been to a dispute resolution hearing and the landlord acknowledged that he hadn't followed through with the repair and offered monetary compensation to the tenant of 1.5% of the monthly rental amount for 10 months. The tenant claims 2.5%, and the claim is set out in the tenant's Monetary Order Worksheet.

On December 12, 2016 the tenant emailed the landlord about a malfunctioning ceiling fan. There was no oven fan and the rental unit suffered extreme heat and odors from another rental unit. Further, the ceiling fan was a method to disperse heat, and was part of the tenancy. The landlord responded that due to cold weather, the ceiling fan wasn't essential. The tenant claims \$2.5% which is also set out in the tenant's Monetary Order Worksheet.

The rental unit is an older residence, and when the tenant moved in he informed the landlords of extreme heat in the bedroom. Heat was controlled by a hot water tank that ran through some points in the rental unit, such as the bathroom and bedroom. Master valves were located in another unit. The landlord responded that he would have the other tenant turn off the valve. However, a new tenant moved into the other unit, who was elderly and required more heat.

The tenant has provided a monetary order worksheet that sets out the itemized claims as against the landlords. The tenant's agent testified that the electric heat was off or on, came on when it was cold and hot and was unpredictable, so the percentage of the loss each month is represented by 2.5% of the rental amount due to the unpredictability of the baseboard heaters and thermostat. The tenant couldn't control it throughout those months. The same applies to ceiling fan and the tenant requests compensation because it stopped working and a lot of smoke and odors came up from the lower unit as well as extreme heat from Unit 1 and a fan would have dispersed all of that. That went on for 19 months. Dated photographs of digital thermometers have been provided for this hearing showing that the heat temperature ranged from 80 to 90 degrees Fahrenheit.

The tenant claims:

- **Heat:**
 - \$100.00 for the landlords' breach by failing to repair and maintain the living room and kitchen electric heaters from September 18, 2017 to July 15, 2018 at \$10.00 per month;
 - \$6.75 loss of quiet enjoyment due to the breach from September 18, 2017 to September 30, 2017 at 2.5%;
 - \$135.04 loss of quiet enjoyment due to the breach from October 1, 2017 to May 31, 2018 at 2.5%; and
 - \$26.33 loss of quiet enjoyment due to the breach from June 1, 2018 to July 15, 2018 at 2.5%;
 - For a total of \$268.12.
- **Ceiling fan:**
 - \$190.00 for the landlords' breach by failing to repair and maintain the living room fan for 19 months at \$10.00 per month;
 - \$10.00 for loss of the fan from December 12 to 31, 2016 at 2.5%;
 - \$81.25 for loss of the use of the fan from January 1 to May 31, 2017 at 2.5%;
 - \$202.56 for loss of use of the fan from June 1, 2017 to May 31, 2018 at 2.5%; and
 - \$35.10 for loss of use from June 1 to July 31, 2018 at 2.5%;
 - For a total of \$518.91.
- **Hot water radiator:**
 - \$180.00 for the landlords' breach by failing to repair and maintain the rental unit for 18 months at \$10.00 per month.
- **Loss of quiet enjoyment:**

- \$483.63 for loss of quiet enjoyment from December 1, 2017 to February 28, 2017 by failing to resolve issues involving another tenant's specific health related heat requirements, for 3 months;
- \$801.90 for heat related health issues from March 1 to August 31, 2017;
- \$501.18 for heat related health issues from September 1, 2017 to January 31, 2018;
- \$167.02 for heat related health issues from February 1 to 28, 2018;
- \$217.76 for heat related health issues from March 1 to Mar 29, 2018
- For a total of \$2,351.49.
- **Loss of use of laundry facilities:**
 - \$65.00 for loss of quiet enjoyment and use;
 - \$320.00 for taxi costs;
 - \$120.00 for washing costs; and
 - \$144.00 for drying costs at a laundromat;
 - For a total of \$584.00.
- **Odors and smoke infiltration:**
 - \$90.00 for 9 months at \$10.00 per month;
 - \$67.50 for loss of quiet enjoyment from February 1, 2018 to February 28, 2018 at 10% of the rent; and
 - \$631.80 for 9 months at 10 % from March 1, 2018 to October 31, 2018;
 - For a total of \$789.30.
- **Termination of a service:**
 - \$30.00 for breach of Section 27 of the *Act* for 3 months at \$10.00 per month;
 - \$30.00 for breach of Section 28 of the *Act* for 3 months at \$10.00 per month;
 - \$97.50 for washing laundry for 13 weeks at \$7.50 per load;
 - \$117.00 for drying laundry for 13 weeks at \$9.00 per load; and
 - \$260.00 for Taxi costs for 13 weeks at \$20.00 per week;
 - For a total of \$534.50.

The tenant's total claim is \$5,141.32 and calculations have also been set out.

The landlord testified that the rental unit is one of 4 units in the complex, and issues with the tenant began at the beginning of the tenancy. There were no other complaints about heat or repair issues by other tenants, but numerous complaints by others about the tenant's erratic and paranoid behaviour, for video and audio recording conversations and having confrontations with laundry facilities. The tenant believed that the landlords have an obligation to police all tenants, and then made allegations about what the

landlords have failed to do by not stopping the behavior of others. The tenant threatened the landlords with a claim for breach of his right to quiet enjoyment.

The landlords have also provided copies of maintenance invoices to establish that the landlords treat the property as an investment and tenants as their customers.

When the landlords purchased the rental property, they were told that it had hot water heat and the landlords had no idea that it had electric baseboard heating. When the landlords found out it had 2 heating systems, they decommissioned 1 radiator which ran through wall between 2 suites. That happened in March, 2018.

However, in August, 2017 the tenant complained about the heat from the hot water heater and said no other sources caused discomfort. The landlord asked another 14 year tenant to make adjustments to the heat controls but the tenant wasn't comfortable of that so the landlord agreed to attend. The landlord did attend 2 days later, the tenant thanked the landlord saying he now knows it can be controlled, and all was good. The landlords didn't know about the 2 systems, and has offered the tenant a 2% rebate on the rent from September, 2017 to June, 2018 in the amount of \$121.50.

It was at this point that the tenant became hostile about the electric baseboard heaters to the landlords, trade people and other tenants. He complained again in November, 2017 but the landlords didn't respond because the message was hostile. Two days later the tenant put a message on the landlord's Craigslist advertisement accusing the landlords of being slum lords and suggesting that tenants do not rent from them.

In December, 2017 the landlord notified the tenant that a plumber would attend for emergency repairs and that access to the rental unit was required, but the tenant refused access. His refusal caused the landlords to incur costs.

With respect to the tenant's claim of loss of quiet enjoyment, the tenant had complained about neighbours and there were repeated confrontations, and the tenant requested that the landlords evict other tenants. However, they were elderly, had no place to go, and the landlords refused to evict them. It got to the point where the landlords had to restrict the shared laundry to avoid conflicts and reduced rent by \$24.00 per month. The tenant rejected the rent reduction and wanted 2 full days of exclusive use of the laundry facilities each week. The tenant's agent paid the full rent by e-transfer without reducing by \$24.00. A copy of the Notice Terminating or Restricting a Service or Facility has been provided as evidence for this hearing. It is dated July 25, 2018 and states that effective August 15, 2018 laundry services will be terminated and rent will be reduced by \$24.00 per month effective August 1, 2018.

The landlords agree to compensate the tenant \$121.50 for the baseboard heaters and \$344.50 for the ceiling fan.

Analysis

Where a party makes a monetary claim for damages as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

I have reviewed all of the evidentiary material of the parties including statements and accept that the statements are true to the best of the knowledge of the parties who made them and/or submitted them.

The tenant, or the tenant's agent has prepared a Monetary Order Worksheet breaking down in great detail the claim which must have taken a great deal of time and effort. I accept that the tenant, or the tenant's agent did so in an effort to satisfy element 3 in the test for damages. However, I also find that a portion of the tenant's claim is meant to punish the landlords, which is not an order I can make.

The landlord did not dispute the issues with the baseboards, and agrees to compensate the tenant the sum of \$121.50, being 2% of the rent for the time period. The tenant claims 2.5%, and \$100.00 for the landlords' breach by failing to repair and maintain the living room and kitchen electric heaters from September 18, 2017 to July 15, 2018 at \$10.00 per month; amounting to \$268.12.

The landlord also did not dispute the claim for the ceiling fan, and agreed that 2% of the monthly rent should be compensated, or \$344.50. The tenant claims \$518.91, including \$190.00 for the landlords' breach by failing to repair and maintain the living room fan for 19 months at \$10.00 per month.

The landlords do not accept the tenant's claim for the hot water radiator because of the tenant's failure to allow emergency repairs to take place. However, I am not satisfied that the emergency repair had anything to do with the hot water radiator.

Where a tenancy has been devalued due to the landlord's failure to repair and maintain the rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant, I may determine the value of that loss.

I accept that the tenant suffered a loss of enjoyment of the rental unit, and the rental unit was devalued by the excessive heat, intermittent and unpredictability of heat, and loss of use of the ceiling fan. The landlord testified that he wasn't aware that there were 2 heating systems running, however given that the tenant made several requests of the landlords and provided numerous digital thermometer readings to the landlords, I find that the tenant has established a claim.

The tenant also claims loss of quiet enjoyment for those issues at 33% of the rental amount multiplied by the percentage of the loss of use and has provided a calculation based on the level of heat and the number of days or hours in a day that the heat was unbearable. I refer to Residential Tenancy Policy Guideline #6 – Entitlement to Quiet Enjoyment – which states, in part:

"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."

The tenant notified the landlord of the hearing problem on September 18, 2017 and it was not fully repaired until July 15, 2018, I find that 20% of the rent paid for those months is justified, being \$1,040.00 from October, 2017 to May, 2018 and \$280.80 once rent had increased for June and July, 2018, for a total of **\$1,320.80**.

In reviewing the evidentiary material of the parties, it is very clear that there were issues between the tenant and other tenants, and the tenant was not satisfied with the way that disputes between tenants were handled by the landlords. The tenant had an obligation to mitigate disputes with other tenants, but expected the landlords to solve each dispute. I find that the tenant was at least as responsible for the disputes and has failed to establish mitigation for loss of quiet enjoyment, or that the landlords have failed to comply with the *Act* or the tenancy agreement.

A landlord may give 30 days notice to a tenant to remove a facility or service and must reduce the rent accordingly. The tenant rejected the landlords' reduction in rent for

removal of the laundry facility and paid the rent in full for the months of August, September and October, 2018 and the notice to restrict the facility is effective August 15, 2018. The tenant's material claims monetary compensation twice for facility, and has not provided any evidence of taxi costs. The Notice Terminating or Restricting a Service or Facility clearly states that if the tenant disagrees with the amount of the reduction, the tenant can make an application through the Residential Tenancy Branch to have it restored or have rent reduced at a different amount, but the tenant didn't do so. I find that the tenant is entitled to compensation for the loss of use of the laundry in the amount of \$24.00 per month for the months of August, September and October, 2018, for a total of **\$72.00**.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the **\$100.00** filing fee.

The Summary provided by the landlords suggests that any award be offset due to the unnecessary expense incurred by the landlords as a result of the tenant refusing access to a plumber for an emergency repair and a missed service call. I have no application for monetary compensation from the landlords, and therefor cannot consider any award in favour of the landlords.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$1,492.80**.

This order is final and binding and may be enforced.

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 31, 2019

Residential Tenancy Branch