



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67.

The landlord's four agents, landlord YB ("landlord"), "landlord RM," "landlord DS" and "landlord TA," the tenant, and the tenant's advocate 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 landlord confirmed that she was the manager of tenant relations, landlord RM was the director of operations, and landlord DS was the manager of maintenance. The landlord confirmed that landlord TA was observing for training purposes only, as she did not testify. The landlord confirmed that the four agents had permission to represent the landlord company named in this application (collectively "landlords"). This hearing lasted approximately 48 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence package.

Issue to be Decided

Is the tenant entitled to a monetary award for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

Both parties agreed to the following facts. This tenancy began on March 15, 2018 and ended on April 30, 2019. Monthly rent in the subsidized amount of \$465.00 was payable on the first day of each month. A security deposit of \$447.50 was paid by the tenant and the landlord returned the deposit to the tenant. The rental unit is a one bedroom, one bathroom apartment located on the fifth floor of a multi-unit apartment building. The tenant estimated that her unit was 350 to 400 square feet. The landlord claimed that the unit was 450 to 500 square feet, of which the bathroom and bedroom closet was 52 square feet total.

The tenant seeks a monetary order of \$1,395.00 from the landlord. The landlord disputes the tenant's claim.

The tenant stated that she is seeking a monetary order for a flood that occurred in her rental unit, due to a leak three floors above her which tricked down into her bedroom closet and her bathroom. She seeks compensation for the loss of her bathroom, bedroom and kitchen. The tenant seeks 50% of her rent back from October 2018 to March 2019, which is $\$465.00/2 = \$232.50 \times 6 \text{ months} = \$1,395.00$. Of the 50% rent per month, the tenant seeks 35% for the loss of the use of her unit and amenities under section 32 of the *Act*, where the landlord must repair and maintain the unit, and 15% for a loss of quiet enjoyment under section 28 of the *Act* for the long renovations. The tenant stated that the above is a reasonable amount for her loss, where she had to forego her hygiene and social events, and for emotional distress. The tenant provided photographs of the work in her unit and emails regarding the repairs.

The tenant testified regarding the following facts. On September 28, 2018, close to midnight, water was dripping inside the walls and bedroom closet, so the tenant called the landlord's after-hours emergency line. The landlord's worker called her back, she reported the water dripping, the worker asked her to touch the walls and the ceiling which were not wet, so the landlord said not to worry. The water got louder and more intense, so the tenant called the landlord's cell number back but the landlord said it was not a big deal. When she woke up on September 29, 2018, the tenant's walls and ceiling were wet, as were her clothes in the bedroom closet. The landlord came over that day, caught the water in a bucket, and took a couple of days to figure out where the water, with fecal matter, was coming from. The landlord then realized that the occupant on the eighth floor left her toilet running and was the source of the leak.

The tenant testified regarding the following facts. On September 30, 2018, the landlord brought in a fan to dry up the water for five days, it heated the room to 40 degrees Celsius, so the tenant could not do anything in her rental unit, including sleeping in her bed, she could only urinate. On October 12, 2018, the landlord removed the bathroom walls and on October 17, 2018, a hazmat team came to remove the asbestos. On November 7, 2018, the tenant had open heart surgery, so it was hard for her to lift things, she was crying, upset, in chaos, and had no mirror. She had to cancel her book study, there was no place to put her towels, she had to stack her bins to reach items, she had no shelving for six months, and she had to sleep in the living room because of the fecal matter in the bedroom. The tenant's kitchen became her bathroom, she had to brush her teeth in there, and the toilet was removed for two days. She had to use a bathroom on the tenth floor on the first day and had to urinate in a bucket in the kitchen on the second day because she did not get a key for the tenth floor.

The tenant maintained that the landlord's initial delay in determining the problem, exacerbated the tenant's losses. As the landlord went to check out the problem the day after it was reported by the tenant, she claims the landlord neglected its responsibility. The tenant said that six months to complete repairs is an unreasonable amount of time.

The tenant agreed that section 15 of her written tenancy agreement requires her to carry personal contents liability insurance but maintained that her claim was not for that. She explained that her claim is for a loss of quiet enjoyment and the landlord's failure to repair and maintain her rental unit. She stated that she attempted to mitigate her losses by removing her items from the closet and putting them in temporary storage.

The landlord disputes the tenant's claims and testified regarding the following facts. Landlord DS got a phone call from the tenant on September 28, 2018, which was a Friday night, regarding a water drip that could wait until morning. He went to the unit with maintenance on the morning of Saturday, September 29, 2018, they opened up the ceiling and walls, they went above to the sixth and seventh floors to find the source of the water, and below the tenant's unit, but could not find the source. They thought that the bucket would suffice to catch the water until the next business day, Monday, October 1, 2018. On Sunday, September 30, 2018, the landlord immediately returned to the building with a construction and hazmat team, when a flood was reported.

The landlord testified regarding the following facts. The landlord contacted their insurance company, as eight units were affected, and the construction company began remediation, including fans, a dehumidifier, cutting out the walls, in order to get rid of the

moisture. The work was done in a timely manner. The authorization to begin the work was signed by the landlord on September 30, 2018, so the claim was put through right away. After the moisture was dealt with, the insurance company dealt with the repairs, which was out of the landlord's control. On November 21, 2018, the authorization for the restoration company was done, but no timeline was given for repairs. The landlord informed the tenant about the repair process, notices of entry were given to the tenant, and the tenant's rental unit became a work site, as did eight other units undergoing repairs for the same reason. No asbestos was detected in the tenant's rental unit. If the tenant had obtained insurance, it would have accommodated her to stay at another place while the repairs were ongoing.

Landlord RM testified that because the tenant informed the landlord that she had nowhere to go, the landlord tried to work around her in the rental unit, with compassion. He stated that the work was done as quickly as possible, while there was a labour shortage for skilled trades in the city at the time, so it was hard to get the work done as quickly as the tenant wanted.

Analysis

Section 32 of *Act* states the following with respect to the obligations of both parties during a tenancy:

- (1) 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.*
- (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.*

Section 28 of the *Act* deals with the tenant's right to quiet enjoyment:

- 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;*

- (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 Tenancy Policy Guideline 6 “Entitlement to Quiet Enjoyment” states the following, in part:

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.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's entire application of \$1,395.00 without leave to reapply.

I find that the landlord met its obligations under section 32 of the *Act*, to repair and maintain the tenant's rental unit. I find that the landlord dealt with the tenant's water leak in a timely and reasonable manner, considering that the repair timelines were out of their control. The landlord investigated the cause, took some time to determine the source, had to deal with eight involved units in the building, contacted their maintenance and insurance company right away, and authorized all repairs to be done right away. The landlord provided copies of the work authorizations, the letter from the insurance company, and the scope of repairs to be done in the tenant's rental unit.

I find that the tenant failed to provide sufficient evidence that the leak caused her a loss of quiet enjoyment. The tenant lived in her rental unit during the repairs and the landlord worked around her being present at the work site. The tenant had access to her bedroom and bathroom for most of the repair period. I find that the repairs performed by the landlord were necessary and had to be balanced with a temporary inconvenience suffered by the tenant. I find that the repairs were not an unreasonable disturbance, as noted in Policy Guideline 6, above. I find that the tenant failed to show how the leak and repairs affected her work or her health. She provided no documents to show wage loss or medical conditions, despite claiming that she had heart surgery and was unable to fully function inside her rental unit.

Conclusion

The tenant's entire 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: July 19, 2019

Residential Tenancy Branch