



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding INTERGULF DEVELOPMENT C/O ASCENT REAL ESTATE
and [tenant name suppressed to protect privacy]

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 award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents (the "landlord").

As both parties were present service of materials was confirmed. The parties each testified that they had been served with the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

The monthly rent for this tenancy is \$1,200.00. On April 9, 2019 a truck driven by a third party crashed into the rental building causing a disruption in power to the rental unit as well as structural damage to the bedroom of the rental suite. The tenants reported the disruption to their landlord. Power was restored after 3 days. The landlord

gave evidence that the holes in the suite were repaired in a reasonable period of time while the tenant says that repairs took closer to a month to complete.

The tenant seeks a monetary award of \$2,087.00 comprised of loss of income, reimbursement for insurance deductibles, loss of quiet enjoyment of the rental suite and other items.

The landlord suggests that a monetary award of \$600.00, approximately half of the monthly rent is a more appropriate figure representing the loss of value of the tenancy.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

Section 28 of the Residential Tenancy Act speaks to a tenant's right to quiet enjoyment, and provides as follows:

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.

The right to quiet enjoyment is elaborated upon in Residential Tenancy Policy Guideline 6 which provides that temporary discomfort or inconvenience does not constitute a basis for a finding of a breach of quiet enjoyment.

In the present case, the parties gave evidence that the rental unit suffered some temporary loss of power and physical damage due to a third party. Accordingly, I find that any damage or loss that is incurred due to the accident is not attributable to the landlord. Only those losses and damage that arise as a result of the landlord's subsequent actions or negligence would form the basis for a monetary award.

I find that the tenant has not established on a balance of probabilities that their loss of income or insurance deductible are attributable to the landlord. Similarly, I find that the cost of additional data service used is not a loss that I find is attributable to the landlord. As such, I dismiss this portion of the tenant's application.

While the tenant seeks a monetary award for loss of quiet enjoyment I find that there is insufficient evidence that the disruption experienced by the tenant was anything more than temporary. I find that the landlord acted reasonably in arranging for repairs upon being notified of the power outage and damage to the structure of the rental unit. As noted above, a claim for loss of quiet enjoyment requires more than temporary inconvenience. I find that the tenant has failed to establish that they suffered anything more than a minor inconvenience which lasted for a few days. I find that the landlord acted reasonably under the circumstances in ensuring that repairs were completed promptly.

I accept the landlord's evidence that the physical damage to the suite was rectified in a reasonable period of time allowing the tenant to use the bedroom. I find that the tenant's own evidence is that the repairs were completed within weeks of the initial damage. I find that there is insufficient evidence that the tenant experienced a loss of quiet enjoyment that would give rise to a monetary award.

I do accept that loss of power and holes in the rental unit walls and ceiling had some impact on the value of the tenancy. I further find that the tenants did incur some disruption to their daily routine due to the landlord's repairs and ongoing work. I find that the tenants experienced a temporary loss in the value of their tenancy due to the lack of power and structural damage. Taking into account all of the evidence including the testimonies and documentary materials I find that a monetary award of \$200.00, approximately 15% of the monthly rent, to be appropriate under the circumstances.

As the tenants were partially successful in their application they are entitled to recover their filing fee from the landlord.

Conclusion

I issue a monetary award in the tenants' favour in the amount of \$300.00 as against the landlord.

The tenants are provided with the Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with the Orders, the Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: August, 2019

Residential Tenancy Branch