



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order of \$500.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of their filing fee. Their claim related to a loss of quiet enjoyment of the rental unit.

The Tenants, B.K. and B.A., and the Landlords, T.E. and O.E., 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 Tenants and the Landlords were given the opportunity to provide their evidence orally and 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 ("RTB") 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 or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed 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 and any orders sent to the appropriate Party.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on January 15, 2019, with a monthly rent of \$1,500.00, due on the fifteenth day of each month. The Parties agreed that the Tenant paid a security deposit of \$750.00, and no pet damage deposit. The Parties agreed that the rental unit is a basement suite of a house.

In their Application the Tenants said:

We went on holidays came back and our dishwasher was leaking, they had to put loud fans and a dehumidifier in our kitchen, we were unable to use basically all of our kitchen having to eat out every day for 10 days and did not have a dishwasher for 16 we were also unable to use our living room because it was too loud to even hear the tv.

[reproduced as written]

In the hearing, the Tenant, B.K., said that they had contractors coming into the rental unit without 24 hours written notice. He said they asked the Landlord for a break in the rent of \$500.00 for all the disturbance they experienced with this problem that they say was due to no fault of their own.

The Landlord, T.E., said that the Tenants were to blame for not telling the Landlords about the leak as soon as it was discovered. The Tenants had said that they arrived home at 1:30 to 2:00 a.m., after a long day of travelling. They said they wiped up the water, went to bed, and let the Landlord know about the leak at 9:08 a.m. The Landlord asked:

Why wait until 9 a.m. to notify us of a flood, instead of immediately. This was negligent. You can't see something like that and not let the Landlords know. Their tiredness was irrelevant. Water was under cabinets and against our baseboards and walls. We could have used the length of time to get the fans in the suite. The water sat against the walls.

The Landlord also questioned why the Tenants would have to eat out throughout the remediation, as she said the restoration company's equipment was never placed in the kitchen, such that it would block any cabinets or appliances. Both Parties submitted photographs with the dehumidifier in place in the kitchen, which show it from different angles.

The Tenants said that they were directed by the restoration company to not move the

equipment left in the kitchen, including the dehumidifier. They said that it has a drip tray underneath it that they would have had to move, as well.

The Landlord said that this was not reasonable, as they could have asked her or someone from the restoration company about moving the dehumidifier, if it affected their use of the kitchen. The Landlord said the dehumidifier has wheels and that the drip tray could have been slid into place. The Tenants said that they were just following the directions they were given to not move the dehumidifier.

In terms of what caused the dishwasher to leak, the Landlord suggested that the Tenants left the appliance running while they were out of the rental unit. She said the dishwasher repair person indicated that "...the door was broken and the seal broken. The guy who installed the new dishwasher said to make sure with the door – put no weight or pressure on it – and don't pull the racks out too far." Still, the Landlord said that the Tenants "...didn't break the dishwasher; it happens. It's our job to fix it professionally and efficiently. We bought them a new dishwasher. [The leak] ruined our suite. We have a house claim now that could cost us."

The Landlord said that the plumber tested the valve for 30 minutes and put paper towels below the valve. He was pretty certain that it wasn't the valve. They clearly saw damage to the door seal.

The Tenants said that the Landlords had claimed that "...we had been leaning on the dishwasher. How people above 5' 8" could lean against a dishwasher that is off the ground and break a dishwasher in three months is ridiculous. It was 8 or 9 years old – brought down from upstairs. There are children up there of the right height to have leaned against the door."

The Tenants explained that their claim for \$500.00 compensation was based on the daily cost of rent, which is \$1,500.00 monthly, divided by 30 days, which comes to \$50 per day. They say they were confined to their bedroom, because of the noise for 16 days. They said they could not use the kitchen, because of the placement of the equipment. They could not watch television in the living room, because of the noise of the fans and dehumidifier. The Tenant, B.K., said they have a sound bar for the television, and even when the volume was set to 85, they still could not hear the TV. He said: "We had to live in our bedroom for 16 days."

The Landlord said:

I believe we've been pretty quick to expedite the repairs and replace the dishwasher – a 2 week turnaround. We tried to reach a negotiation. [Tenant B.K.] started with \$1500.00, and we said that wasn't acceptable. We were going back and forth on a number. We've acted in good faith. We have been good to the Tenants and now we're accused of harassment and bullying. It's been stressful to us; I've spent a lot of time putting packages together to defend our position.

They said they were stuck in their room for 15 days; however, the dehumidifier was only in the suite for four days and nine days with the fans. That's inconvenient, but that's not our fault. We also tried to provide compensation of \$200.00.

Analysis

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

Under section 32 of the Act, a landlord is required to repair and maintain a rental unit and residential property, so that it meets health, safety and building laws and is suitable for occupation by the tenant, having regard for its age, character and location.

Section 28 of the Act sets out a tenant's entitlement to the use and enjoyment of the rental unit, free from unreasonable disturbance or significant interference. Where a tenant suffers loss of use and/or enjoyment of the rental unit, the tenant may be entitled to compensation from the landlord for the loss. RTB Policy Guideline #6, *Entitlement to Quiet Enjoyment* provides information with respect to loss of quiet enjoyment including the following:

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.

...

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.

Section 65 of the Act allows me to issue a monetary order to reduce past or future rent by a tenant to a landlord if I determine that there has been a reduction in the value of a tenancy agreement.

The Parties' respective photographs show the kitchen from different angles. I find it was easier to see the location of the equipment in the Tenants' photographs. Based on all the photographs, overall, I find that the dehumidifier blocked the Tenants' use of the oven. Therefore, I find that the Tenants were limited to the type of food they could prepare, while the dehumidifier was in place. I find it reasonable that the Tenants would have gone out for some meals, given their lack of access to a full kitchen and the ongoing noise in the rental unit.

I find it reasonable that the Tenants would not have wanted to move the restoration company's equipment, since they were told not to move it by the company representative. If there was discussion and negotiation with the Landlords, I trust that the matter of the dehumidifier blocking the oven would have come up. The Landlords could have told the Tenants to move the equipment at that point, if the Landlord is now

saying that this was possible. I find that the Tenants' belief that they could not move the equipment was reasonable in the situation.

There is no persuasive evidence before me that the Tenants were responsible for the dishwasher leak. Rather, the Parties agreed that the dishwasher was eight or nine years old. Based on Policy Guideline #40, which sets out the useful life of building elements, I find that the useful life of a dishwasher is ten years. Accordingly, this dishwasher was close to the end of its useful life. I find it is reasonable to infer that the damage to the dishwasher accumulated over the life of the dishwasher, not in the three months in which the Tenants used it.

I find that the Tenants suffered a loss of quiet enjoyment of the rental unit while the restoration company's equipment was present and running. The undisputed evidence is that they were able to use the bedroom and bathroom of the rental unit, during this time. However, the Tenants did not dispute the Landlords' evidence in the hearing that the dehumidifier was removed after four days. As such, the Tenants would have been able to use the kitchen, aside from the dishwasher, so they would not have had to go out for meals for the full time. They indicated that the fans were still noisy in the unit, though.

I find that there is insufficient evidence before me to find fault for the dishwasher leak; however, I have taken into consideration the age of the appliance and its expected useful life in this regard. Based on PG #6, I find this situation involved more than a temporary discomfort or inconvenience; rather, I find that there was substantial interference with the Tenants' quiet enjoyment of their living space.

Based on the evidence before me, overall, I find that the dehumidifier was in the kitchen, inhibiting use of the kitchen and causing noise disturbance for four days and the fans were in the kitchen, contributing to the noise disturbance for nine days. I find the Tenants were unable to use approximately 70% of the rental unit for four days and approximately 50% of the rental unit for five days. Accordingly, I find it reasonable to award them \$35.00 per day for four days and \$25.00 per day for five days for a total monetary award of \$265.00. I authorize the Tenants to deduct this amount from one future rent payment in full satisfaction of this award.

Conclusion

There was substantial interference of the Tenants' right to quiet enjoyment of the rental unit for a total of nine days, due to the constant operation of professional-sized fans and dehumidifier. Based on the degree to which the Tenants' use of the rental unit was

limited over the nine days, I have awarded the Tenants' a one-time rent reduction of \$265.00. The Tenants are authorized to reduce one future rent payment by this amount.

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: August 21, 2019

Residential Tenancy Branch