Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, FFT (tenant); MNDCL, MNDL, FFL (landlord)**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

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

- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;

- Authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The hearing process was explained. The parties had an opportunity to ask questions about the hearing process.

Each party acknowledged receipt of the other party's Notice of Hearing and Application for Dispute Resolution. At the beginning of the hearing, neither party raised issues of

service. I find each party served the other in accordance with the *Act*.

Issue(s) to be Decided

Is either party entitled to a Monetary Order under section 67 and reimbursement of the filing fee under section 72?

Background and Evidence

The parties agreed the 6-month fixed term tenancy began August 3, 2018 and ended when the tenant vacated on November 14, 2019, 2.5 months before the end of the term. Monthly rent was $2,600.00 payable on the first of the month. The tenant provided a security deposit of $1,300.00 the balance of which was returned to the tenant on November 14, 2019.

A copy of the tenancy agreement was submitted. The parties agreed the tenancy included cable TV, window coverings and laundry shared between the parties.

The unit is above the landlord's apartment. The tenant testified that he needed temporary accommodation for six months while construction was completed on his condo. The tenant provided his own TV and furnishings.

Difficulties between the parties arose very soon after the tenancy began. The first major issue concerned the provision of the cable TV.

The tenant testified that the parties agreed on a "channel package" for cable TV which the tenant expected to be available throughout the tenancy. The tenant claimed that he and his partner only had the cable TV package about two weeks of the 3.5 months tenancy. While other programming was available, the selected cable channels were not.

The tenant testified he requested the TV service many times; the correspondence between the parties confirms this. The tenant said he worked very long hours and it was important to him to have cable TV in the evening.

The landlord said the problem was not with the cable TV provided, but with the tenant's ability to properly operate the television. The landlord denied that he failed to provide the cable TV channels as agreed.

A second issue arose concerning the provision of "window coverings" under the lease.

The tenant testified that only half of the windows had window coverings when they moved in; they expected that the landlord would put up the remainder of the coverings. The tenant was uncomfortable with the visibility of the interior of the unit by passersby and by the landlord.

The issue came to a head about five or so weeks after they moved in. The tenant testified that the landlord walked into the unit's kitchen without knocking and surprised the tenant and the tenant's partner in her night wear. The tenant and his partner were shocked and believed the landlord had invaded their privacy. They demanded the landlord install the remainder of the window coverings so no one could see into their unit.

In an email, a copy of which was submitted, the landlord suggested that the tenant put paper over the windows. The tenant tried this but found the paper unsatisfactory as it kept out the light. The landlord's response to the tenant's claim in this regard was that the tenant had looked at the unit before renting it, knew how many window coverings there were, and could not expect anything different. Eventually, the landlord hung a curtain which the tenant described as inadequate and old.

The third major issue between the parties occurred over laundry use which was shared between the parties. The landlord accused the tenant of washing multiple loads a day and not washing full loads.

Unbeknownst to the tenant, the landlord took a picture of the tenant's laundry in the washer to illustrate that it did not amount to a full load and sent the picture to the tenant. The tenant was outraged. He denied he was using the laundry excessively. He believed that the landlord had invaded his privacy and was making outrageous accusations.

The tenant claimed that the landlord wanted the tenant to sign an addendum to the tenancy agreement setting out that the tenant could only use the laundry facilities on certain days. The tenant disagreed with this suggestion.

The tenant testified that the more the tenant asked for the landlord to provide cable TV, the more the landlord insisted on the addendum to deal with the laundry use. The tenant testified that a new box for the cable TV ordered. The tenant claimed the landlord withheld providing the box in order to coerce the tenant to sign the addendum.

In an email from the landlord to the tenant, a copy of which was submitted, the landlord informed the tenant that the sooner the addendum was signed, the sooner the cable TV

issue would be resolved. The tenant said he was frustrated from repeatedly asking for the same thing.

The tenant claimed there were many other issues between the parties, “about 12 or 13”. For example, the landlord accused the tenant of overwatering a plant outside the unit, thereby killing it; the landlord failed to reinstall a railing that the tenant needed to safely exit the unit; the tenant “never knew if he [the landlord] had been in our unit”.

As a result, the tenant said he felt anxious and worried all the time and wondered how his partner, who was retired, was making out with the landlord while he was at work. The tenant said he never knew what problem would await him when he got home in the evening, he never knew what the landlord would do, and “I don’t know how I functioned in my job”. The tenant made a police report about the landlord which did not result in a charge.

The landlord accused the tenant of being unreasonable and said he “thought the tenant would shoot him” when he went upstairs. The tenant expressed astonishment at this claim saying he did not own a gun and never threatened the landlord.

The parties agreed in the following. The landlord told the tenant in an email of September 18, 2019, that if the tenants did not like it, they could leave. On October 1, 2019, the tenants gave a 6 week notice of their intention to vacate November 14, 2019. The landlord accepted the notice. The tenants moved out on November 14, 2019. The landlord did a “walk-through” but no written condition inspection report on moving out was submitted. The landlord returned the balance of the security deposit to the tenant in cash.

The tenant requested reimbursement of two months rent from the landlord for loss of quiet enjoyment. The tenant said the landlord made the tenancy “a nightmare of all nightmares”. The tenant said that they did not feel safe; they believed they had no privacy and they “still shake when they think about it”.

The landlord clarified his claim as follows:

ITEM	AMOUNT
Loss of rent for 2.5 months	$6,500.00
Flooring repair	$2,500.00
TOTAL CLAIM - LANDLORD	**$9,000.00**

Each of the landlord's claims are examined.

Loss of rent for 2.5 months

The landlord claimed that the tenant left the tenancy 2.5 months before the expiry of the fixed term. The landlord acknowledged that he decided not to rent the unit out when the tenants vacated, but to merely rent a bedroom.

The landlord testified that he rented the room in the unit for $700.00 for the month of December 2019. Then, on January 15, 2020, the landlord rented the room on an ongoing month to month rent of $700.00.

The tenants stated that they are not responsible for rent until the end of the fixed term; the parties agreed to end the tenancy on November 14, 2019 and this agreement was a change to the term freely entered into by both parties.

Repair to Floor

A condition inspection report on moving in was submitted which stated that the unit was in good condition in all material respects. As stated earlier, the landlord did a "walk through" when the tenants vacated and returned their security deposit to them.

However, the landlord testified that the following day, he looked at the unit in daylight and noticed scratches to the hardwood floor, photographs of which were submitted. The landlord claimed the floor had been refinished shortly before the tenants moved in, although the landlord submitted no supporting documentary evidence in this regard. The landlord testified that he obtained three quotes of repairs to the flooring and requested reimbursement of $2,500.00, the lowest amount of the quotes.

After the landlord was served with the tenant's claim, the landlord filed a cross-application which included damage to the flooring.

The tenant denied that they were responsible for any of the scratches. They said they only lived in the unit a short time and took good care of the flooring.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the parties' submissions and arguments are reproduced here

in a hearing which lasted 90 minutes. Each party submitted substantial written evidence, much of which had detailed hand-written notes on the margins and between the lines. The relevant and important aspects of the claims and my findings are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the claiming party to prove entitlement to a claim for a monetary award. 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.

Tenant's claim: loss of quiet enjoyment

Section 28 of the *Act* deals with the tenant's right to quiet enjoyment. The section states 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 Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment states

as follows:

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.

…

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).

(*emphasis a*dde*d*)

I acknowledge that the landlord disagreed with the tenant's version of events and asserted that the tenant is to blame for all issues – the cable TV, the laundry and window coverings, just to name three main areas of argument. The landlord denied the tenant had any reasonable cause to complain and only had himself to blame.

I found the landlord exaggerated his testimony; for example, he said he thought the tenant "would shoot him" and he thought the tenant was "scamming" him. I find the landlord did not provide calm and measured testimony; I do not find the landlord completely credible or his testimony persuasive.

I find the tenant was believable, calm and forthright in his testimony which was supported by considerable evidence including many letters to the landlord. These letters clearly and concisely set out the problems they experienced with failure of the cable TV, the refusal of the landlord to address or fix the problem, the intrusion on their privacy around laundry use, and the willful failure of the landlord to provide reasonable window coverings. The landlord's suggestions that the tenant did not know how to operate his own TV, that the tenant was doing many loads of laundry a day, and that paper was a

suitable window covering, are absurd and unbelievable assertions.

I accordingly give more weight to the tenant's testimony.

I find the tenant was genuinely and severely disturbed by the landlord's repeated failure to provide cable TV as promised, by his linking of the proposed laundry addendum with compliance around TV, and by his failure to provide reasonable privacy by means of window coverings.

I accept the tenant's description of the situation as being a "nightmare" causing anxiety.

I find the landlord created a stressful tenancy which had an increasingly traumatic and negative impact on the tenant who concluded that he and his partner had to vacate the unit as quickly as possible.

In consideration of the quantum of damages, I refer again to the *Residential Tenancy Policy Guideline # 6* which states:

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.

Based on the weight I have given to the parties' evidence, I find the tenant has met the burden of proof on a balance of probabilities for a claim for compensation for loss of quiet enjoyment.

In considering the testimony of the parties and the evidence, I find it reasonable to reimburse the tenant for one month's rent in the amount of $2,600.00. Accordingly, I award the tenant a monetary order in this amount for this aspect of their claim.

Landlord's Claim

Loss of rent

I find the parties agreed, as indeed they both acknowledged, that the tenancy would end on November 14, 2019. The 6-week notice was accepted by the landlord. Both parties were relieved the ordeal was over. I find the tenancy agreement ended on November 14, 2020 by agreement of the parties.

Based on the evidence submitted by the parties, I find that the landlord has failed on a balance of probabilities to meet the burden of proof that he is entitled to any rent following November 14, 2019.

I find the landlord is not entitled to loss of rent.

I therefore dismiss this aspect of the landlord's claim without leave to reapply.

Repair to Floor

I find that the landlord has failed to meet the burden of proof on a balance of probabilities with respect to this aspect of the landlord's claim.

While I accept that the floor appears to have scratch marks on it, I find that there is no evidence that the tenant is responsible for the damage. I place considerable weight on the fact that the landlord walked through the unit before the tenant left on November 14, 2019 and returned the balance of the security deposit at that time.

I find the landlord claimed this damage primarily as a response to the tenant's claim and not because the tenant is responsible. I also find that the landlord has not incurred any expense with respect to the repairs and therefore has no damages for which to claim compensation.

I therefore dismiss this aspect of the landlord's claim without leave to reapply.

Filing Fee

As the tenant has been successful in his claim, I grant the tenant a monetary award of $100.00 as reimbursement of the filing fee.

Summary of Award

I dismiss the landlord's claims without leave to reapply.

I award the tenant as follows:

ITEM	AMOUNT
Loss of quiet enjoyment	$2,600.00

Reimbursement filing fee	$100.00
TOTAL AWARD – TENANT	**$2,700.00**

Conclusion

I grant the tenant a monetary order in the amount of **$2,700.00**. This order must be served on the landlord. If the landlord fails to pay this amount, the tenant may enforce this order in the Supreme Court of British Columbia, Small Claims Division as an order 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: April 14, 2020

Residential Tenancy Branch