



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT
 MNDCL, MNDL, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on November 15, 2019. The Tenant applied for a monetary order for compensation for my monetary loss or other money owed.

The Landlords’ Application for Dispute Resolution was made on March 6, 2019. The Landlords applied for a monetary order for compensation for monetary loss or other money owed, for compensation for damage caused by the tenant, their pets or guests to the unit, site or property and to recover their filing fee.

One of the Landlords, their Translator (the “Landlords”) and the Tenant, attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlords were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to monetary compensation under the *Act*?
- Are the Landlords entitled to monetary compensation for damages under the *Act*?
- Are the Landlords entitled to monetary compensation for losses under the *Act*?
- Are the Landlords entitled to recover the cost of the filing fee?

Background and Evidence

Both parties testified that the tenancy began on September 7, 2017, as a one-year fixed-term tenancy that rolled into a month to month tenancy at the end of the first year. The Landlords and Tenant agreed that, as per the tenancy agreement, rent in the amount of \$550.00 was to be paid by the first day of each month, and the Tenant had paid a \$275.00 security deposit at the outset of this tenancy. Both parties submitted a copy of the tenancy agreement into documentary evidence.

The Tenant and the Landlord testified that the Landlord issued the Tenant a One-Month Notice to End Tenancy for Cause (the "Notice"), on September 28, 2019. The Tenant submitted a copy of the two-page Notice into documentary evidence.

Both parties agreed that the Tenant had moved out of the rental unit as of October 31, 2019, in accordance with the Notice. The Tenant testified that they did not agree with the reasons listed on Notice, but they had wanted to leave of other reasons, so they did not dispute the Notice.

The Tenant testified that on September 23, 2019, the Tenant and the other renters, living at the rental property, noticed that there was a small black stain in the kitchen of the rental property. The Tenant testified that one of the other renters contacted the Landlords right away and told them of the stain.

The Landlords testified that they received the call from the other renter regarding dirty black water that had been found in the kitchen on September 23, 2019. The Landlords testified that they attend the property the next day to assess the problem and had found mould in the kitchen cupboards. The Landlords testified that they immediately called a contractor they used, to investigate and determine what was wrong. The Landlords testified that the contractor advised them that there was water damage in the kitchen that had caused mould and that to protect the health of the renters living on the

property, they would need to remove the cupboards to determine the extent of the problem. The Landlords testified that the restoration and repair work started on September 26, 2019, with the removal of the cupboards. The Landlords submitted a copy of three pictures of the kitchen taken after the cupboards had been removed and a copy of a statement from their contractor into documentary evidence.

The Tenant testified that they agreed that the restoration work began on September 26, 2019, and that they had no use of the kitchen from that day forward, until the end of their tenancy.

The Landlords testified that after the cupboards had been removed, they had found that a lot of water had collected under the cupboards, causing damage to the kitchen floor and the wall below the window, including the drywall, insulation and tar paper. The Landlords testified that they had asked the contractor to tell them what had caused this damage. The Landlord testified that their contractor advised that there could be three possibilities for the cause of the damage; a broken pipe, someone deliberately pouring water down the wall, or it could have been rainwater from someone leaving the kitchen window open. The Landlords testified that their contractor had a plumber inspect the pipers in the rental unit to make sure no pipes were broken or leaking. The Landlord testified that their contractor advised them that the plumber had found the pipers to be in good working order and that the same plumber had stated that the damage could not have been caused by someone deliberately pouring water down the back of the wall.

The Landlords testified that as the plumber had eliminated the other two possible causes of the water and mould damage, then the only possible remaining cause of damage to the kitchen must be that the renters, including the Tenant, left the kitchen window open when it rained. The Landlords testified that they believe that the Tenant had been negligent in their care of the rental property resulting in extensive damage. The Landlords are requesting the recovery of 25% of their costs to repair the rental unit, in the amount of \$3,439.00. The Landlords submitted a copy of the quote for the repair work as well as a copy of the invoice for the repair work into documentary evidence.

When asked by this Arbitrator, the Landlord testified that they are not pursuing legal claims for the remaining 75% of their cost for repairs of the rental unit from the other three renters. When asked by this Arbitrator why they were not pursuing claims against the other three renters at the same property, the Landlords testified that the other three had not brought claims against them, the Landlords, so they would go after the other renters. The Landlords also testified that in the light of this Tenant's claim against them, they decided to claim for this Tenant's share of the repair work.

The Tenant testified that they did not leave the window open in the kitchen and that they did not cause the water damage to the kitchen in the rental unit. The Tenant testified that they always found the rental property to be cold and would constantly be closing windows throughout the rental unit to warm up. The Tenant testified that the Landlord regularly attended the rental unit, without notice, and that it was the Landlord who kept opening the windows, telling the Tenant that there was a moisture problem in the property and that they need to open the windows to let air circulate. The Tenant testified that they believe the entire home had a mould problem, not just the kitchen, and that the Landlords are just trying to intimidate the Tenant into dropping to claim for compensation. The Tenant submitted eight pictures of black mould throughout the rental property into documentary evidence.

The Landlords testified that they agreed that they did attend the rental property regularly, and without notice to the Tenant. The Landlords went on to testify that they attend the property to open windows to ensure that the property was aired out due to previous moisture problems in the bathroom.

The Landlords are also claiming for the recovery of money lost during the tenancy, in the amount of \$220.00. The Landlords testified that the Tenant refusal to pay a rent increase that had been issued during the tenancy. The Landlords testified that they issued a Notice of Rent Increase on September 7, 2018, but that they Tenant had insisted on only paying the original rent amount, and that the Tenant had just ignored the Rent Increase Notice. The Landlords testified the rent increase had been for \$22.00 and was effective as of January 1, 2019. The landlords are requesting the recovery of the unpaid rent for the period between January 1, 2019, and October 31, 2019, at a rate of \$22.00 per month. The Landlords submitted a copy of the Rent Increase Notice into documentary evidence.

The Tenant testified that they are claiming for \$1,200.00 in compensation, consisting of \$500.00 for the loss of the use of the kitchen during the tenancy, \$200.00 for the loss of quiet enjoyment during the tenancy and \$500.00 for stress and moving costs.

The Tenant testified that they were not allowed to use the kitchen in the rental unit from September 26, 2019, to October 31, 2019. The Tenant testified they are requesting \$500.00 in compensation due to the loss of the use of the kitchen.

The Landlords testified that the Tenant had told the Landlords they were ok with no kitchen as long as there was a microwave in the living room that they could use. The

Landlords testified that they moved the microwave from the kitchen to the living room for the Tenant and the other renters to use.

The Tenant testified that they had moved the microwave to the living room, not the Landlords and that they had never stated a microwave was a suitable replacement for a full kitchen.

The Tenant testified that the workers hired by the Landlord were very loud during the day, a lot of hammering and banging and that the noise was disturbing. The Tenant testified that they wrote a letter, dated October 9, 2019, to the Landlord requesting that the repair/restoration work to the kitchen be stopped until she moved out. The Tenant testified that they are requesting \$200.00 in compensation due to the loss of quiet enjoyment of the rental property due to the noise the repair workers caused. The Tenant submitted a copy of their letter to the Landlord into documentary evidence.

The Landlords testified that the repair works were only there between the hours of 9:30 a.m. and 4:30 p.m., Monday to Friday and that the workers only made reasonable noise related to the work they were doing. The Landlords testified that the repair work was stopped until the Tenant had moved out, as per the Tenant's request.

The Tenant testified that they are also requesting \$500.00 in compensation due to stress and moving costs.

The Landlord disagreed with this requested compensation due to stress and moving costs.

Analysis

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here.

I accept the agreed-upon testimony of these parties that this tenancy was a month to month tenancy when it ended on October 31, 2019. I also accept that there were four separate tenancies housed in the same rental property and that each renter had their own tenancy agreement, their own room and shared use of the common areas, including the kitchen, bathroom and living room.

I accept the agreed-upon testimony of these parties that the Tenant and the other renters living on the rental property reported a water and mould problem in the kitchen of the rental property, to the Landlords, on September 23, 2019. I also accept the agreed-upon testimony of these parties the Landlord took immediate steps to have the water and mould problem in the shared kitchen investigated and repaired, but that the Tenant and the other renter lost the use of the kitchen due to these repairs, between September 26, 2019, until this tenancy ended on October 31, 2019.

Additionally, I accept the agreed-upon testimony of these parties that the Landlord issued a One-Month Notice to End Tenancy for Cause to the Tenant on September 28, 2019, listing an effective date of October 31, 2019, and that the Tenant did not dispute the Notice and moved out in accordance with that Notice.

Finally, I accept the agreed-upon testimony of both these parties that the Landlord would attend the rental property, regularly, without notice to the Tenant or the other renters living in the rental property, and that during these visits the Landlord would open the windows in the rental unit to allow for airflow.

Tenant's Claim:

I have reviewed the Tenant's claim for \$1200.00 in compensation, consisting of \$500.00 due to loss of the use of the kitchen for 36 days, \$200.00 in loss of quiet enjoyment due to the noise caused by repair work and \$500.00 in stress and moving costs. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;

- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

First, I will address the Tenant's claim for \$500.00 in compensation due to the loss of the use of the kitchen for 36 days. It has already been established that the Tenant did lose the use of the shared kitchen due to required repairs, on September 26, 2019, I find that the very day use of a kitchen to be an essential facility for any tenancy. Section 27 of the Act, states the following:

Terminating or restricting services or facilities

27(1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Although I find that the Landlord was acting appropriately when they started repairs/renovations immediately and that cutting off the use of the kitchen due to the presence of black mould was required, I also find that the Landlord breached the *Act* when they did not offer a rent reduction to the Tenant for the removal of the use of an essential facility, the kitchen, during the required repair period.

On a balance of probabilities, I find that the Tenant would have suffered a loss due to the loss of the use of this facility. I have reviewed the Tenant's claim for \$500.00 in compensation, at a rate of \$13.88 per day for 36 days, and I find \$13.88 per day to be an arbitrary yet reasonable value for compensation due to the Tenant's loss.

However, before I can make an award due to this loss, I must also consider if the Tenant acted reasonably to minimize their loss. I accept the testimony of the Tenant that the noise of the contractors working disturbed them and that they had written a

letter to the Landlord, dated October 9, 2019, requesting that the work to repair the kitchen be stopped until the Tenant could move out. I also accept the testimony of both these parties that the Landlord had, stopped the repair work as the Tenant had requested. I find it unreasonable that the Tenant would request compensation for the entire period of time that the kitchen was unusable to them, due to the needed repair/renovation. While at the same time, they are the ones who insisted that the needed repair/renovation work be stopped.

I find that the Tenant did not mitigate their losses when they requested that the repair/renovation work be stopped due to noise. Consequently, I find that the Tenant is not entitled to compensation for the period between October 9, 2019, and October 31, 2019, the period they requested the needed repair/renovation work be stopped.

Although, I do find that the Tenant was without the use of the kitchen in the rental unit, between September 26, 2019, to October 8, 2019, a total of 13 days, when they did not interfere with the repair work. Therefore, I find that the Tenant is entitled to 13 days of compensation, at the Tenant's reasonable requested rate of \$13.88 per day.

Accordingly, I award the Tenant \$180.44 in compensation for an essential facility, the kitchen, not provided between September 26, 2019, to October 8, 2019.

As for the Tenant's claim for \$200.00 in compensation due to the loss of quiet enjoyment cause by the noise of the kitchen repairs, between September 24, 2019, to October 31, 2019. I must apply the same test as above, and first determine if the Landlord breached the *Act*, section 28 states the following regarding the right to quiet enjoyment:

Protection of 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.*

In determining if there has been a breach of the Tenant's right to quiet enjoyment, I must consider the guidance found in the Residential Tenancy Policy Guideline #6 Entitlement to Quiet Enjoyment, which states the following:

BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

"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"

The Tenant has claimed that the noise caused by the repair technicians working in the kitchen was unreasonably loud during the day. I accept the agreed-upon testimony of these parties that the repair technicians worked in the kitchen between the hours of 9:00 a.m. to 4:30 p.m., Monday to Friday, and I find this to be reasonable hours of work.

After reviewing all of the documentary evidence and verbal testimony that I have before me, I find that the Tenant has not provided sufficient or compelling evidence to persuade me that the noise caused by the repair/renovation workers had substantially interfered with the Tenant. As the Tenant has not met the onus to establish their claim on this point, I dismiss their claim for compensation due to the loss of quiet enjoyment in its entirety.

Finally, the Tenants claim for \$500.00 in stress and moving costs. I have reviewed all of the documentary evidence and verbal testimony that I have before me with an eye to this portion of the Tenant's claim. After careful review, I find that the Tenant has not provided sufficient evidence or explanation as to what part of the claimed \$500.00 is for stress and what part is for moving cost, nor have they established a breach of the *Act*, by the Landlord, concerning this portion of their claim. Consequently, I dismiss their claim for compensation due to stress and moving costs in its entirety.

Landlords' Claim:

I have reviewed the Landlords' claim for \$3,439.00 in compensation due to damages caused by the Tenant, their pets or guests to the unit, site or property. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16

Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

First, I must determine if the Tenant breached the Act by causing damage to the rental property during the tenancy. Section 32 of the Act speak to a landlord and tenant's obligations to repair and maintain the rental unit, stating the following:

Landlord and tenant obligations to repair and maintain

32 (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.

(3)A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4)A tenant is not required to make repairs for reasonable wear and tear.

(5)A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

It is the Landlords' claim that the Tenant neglected to close the window in the kitchen when it rained, and that the rain coming in through the open window caused the water and mould damage to the kitchen, which resulted in the need for the repair/renovation of the kitchen in the rental unit. The Tenant's asserts that the rental property had an ongoing condensation, airflow and mould problem, during their whole tenancy, and that they were always closing the windows left open by the Landlord and other renters as they were always cold.

During this hearing, the parties to this dispute have offered conflicting verbal testimony regarding the cause of the water and mould damage to the kitchen of the rental property. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, on this point, that would be the Landlords.

I have reviewed the evidence package submitted by the Landlords, and I noted that there was no Move-in/Move-out inspection report, entered into documentary evidence. In the absence of that document, I must rely on verbal testimony given during this hearing and the remaining documentary evidence regarding the condition of the rental unit at the beginning and the end of this tenancy.

I have reviewed the picture evidence submitted by the Landlords and although the pictures due show extensive water and mould damage to the kitchen of the rental unit, I find that it is not the extent of water and mould damage that is in dispute during these proceedings but who caused the damage. After reviewing this picture evidence, I find these pictures offer no probative value in determining who caused this damage.

During the proceeding, the Landlords reference a letter from their contractor as their proof that the Tenant had caused the water damage to the kitchen. I have reviewed this letter, and I find that this letter discusses several possible causes for the water damage to the kitchen, and in the end, makes an educated guess as to what the cause damage. However, I find that this letter offers no firm conclusion or proof that it was this Tenant that cause the water and mould damage to the kitchen of the rental unit.

After reviewing all of the documentary evidence and verbal testimony that I have before me, I find that the Landlords have not provided sufficient or compelling evidence to persuade me that this Tenant caused the damage they are claiming for in these proceedings.

Therefore, based on the evidence I have before me, I am not satisfied that the Tenant caused the damage to the rental property that the Landlords are claiming for in these proceedings. As the Landlords have not met the onus to establish their claim on this point, I dismiss their claim for compensation due to damages caused by the Tenant in its entirety.

As for the Landlords' claim for \$220.00 in monetary loss due to the Tenant not paying a rent increase, it was undisputed by the Tenant that they had received a rent increase notice on September 6, 2018, and that the rent increase had not been paid. However, I accept the testimony of the Landlords that at no point during this tenancy, or for 125 days after the tenancy had ended, had they taken action to collect this rent increase. I find that the legal principle of estoppel applies to this part of the Landlords' claim. Estoppel is a legal doctrine which holds that one party must be strictly prevented from enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on that conduct and has acted accordingly. To return to a strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct and are now going to strictly enforce the right previously waived or not enforced.

In this case, I find that the Landlords established a pattern of not requiring the Tenant to pay the rent increase. I also find that the Tenant relied on this pattern and had never paid the rent increase during this tenancy. As this tenancy has already ended, I find that it is too late for the Landlord to give notice to the Tenant that they are changing their conduct and are now going to strictly enforce the rent increase notice. Therefore, I find that the Landlords are not entitled to their claim for \$220.00 in monetary loss due to the Tenant not paying a rent increase. Consequently, I dismiss this portion of the Landlords' claim in its entirety.

Additionally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords have failed in their application, I find that the Landlords are not entitled to recover the filing fee paid for this application.

Conclusion

I grant the Tenant a **Monetary Order** in the amount of **\$180.44**. The Tenant is provided with this Order in the above terms, and the Landlords must be served with this Order as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the Landlords' claim in its entirety.

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 16, 2020

Residential Tenancy Branch