



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding H-Pro Real Estate Services LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, OLC, MNDCT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order to reduce the rent for repairs, services or facilities agreed upon, but not provided in the amount of \$15,000; for an order for the Landlord to comply with the Act or tenancy agreement; and for a monetary order for damage or compensation under the Act for the Tenants in the amount of \$2,000.00.

The Tenants, V.T. and V.K., and an agent for the Landlord, R.R. ("Agent") 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 Agent were given the opportunity to provide their evidence orally and to 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 ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

In considering service of the Application for Dispute Resolution and Notice of Hearing, the Tenants testified that they served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on February 6, 2020. The Tenants did not provide a Canada Post tracking number, as evidence of service. However, the Agent said he received a copy of the Application and Notice of Hearing, but that the Tenants' documentary evidence was not included in the registered mail package.

The Agent said he sent a copy of his RTB submissions to the Tenants by registered

mail on March 25, 2020. The Tenants said they received the Agent's evidence and had time to review it prior to the hearing.

I find that the Tenants' documentary submissions are not evidence before me, as they were not received by the Landlord, as required by the Rules. I find that the Landlord's submissions are evidence before me, since the Tenants acknowledged their receipt and the opportunity to review this evidence.

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.

Early in the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenants indicated different matters of dispute on the application, the most urgent of which are the request to reduce the rent for repairs, services or facilities agreed upon but not provided, and for an order for the Landlord to comply with the Act and tenancy agreement. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenants' request for an Order to reduce the rent for repairs, services or facilities agreed upon, but not provided, and for an order for the Landlord to comply with the Act and tenancy agreement at this proceeding. Therefore, the Tenants' other claim for monetary compensation is dismissed, with leave to re-apply.

Issue(s) to be Decided

- Are the Tenants entitled to a rent reduction for repairs, and if so, in what amount?
- Are the Tenants entitled to an Order for the Landlord to Comply with the Act or tenancy agreement?

Background and Evidence

The Parties agreed that the fixed term tenancy began on May 1, 2019, and was to run to April 30, 2020, with a monthly rent of \$2,500.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$1,250.00, and no pet damage deposit.

#1 ORDER TO REDUCE RENT FOR REPAIRS → \$15,000.00

The Tenants provided detailed testimony of how their use of the rental unit was negatively affected by construction work going on in the residential property. The Tenants' claim is for recovery of half a month's rent for each of the last 12 months.

The Tenant, V.T., said that she knew there was going to be some construction before the tenancy started, but she said she did not know about the extent of the repairs to be done or the impact it would have on her and her son.

Patio Usage

The Tenants said the construction company doing the renovations used the Tenants' patio to store some of the company's equipment and the building materials for the building repairs. In the hearing the Tenant said: "They didn't say I wouldn't be able to use my patio. All I see is a mess. You are living in some construction company yard."

The Agent said the rental unit patio runs the length of the apartment and is about ten feet deep. He said: "I had no control over that, unfortunately, although I mentioned it to them. There was a shoot that comes down to her patio. There are rocks piled off from what came down. You can't use the patio at all."

Noise

The Tenants said: "There is noise and banging every day starting at 7:30 a.m. until 3:30 p.m." The Tenant, V.T., said that she was sick at one point in the last year, and: "There was no where to go. I had head aches; it was very stressful and depressing."

Plywood Over Windows

The Tenant also said that starting in September 2019, the contractors put plywood over the windows, which rendered the rental unit dark. Also, she said she had to put up with construction workers entering her apartment regularly for work on the building. The Agent said that this was out of his control. The Parties agreed that the plywood has been removed from all windows, except in the master bedroom.

Workers Accessing Suite

The Tenant said the construction workers started coming in July [2019], for a month:

People were coming and going, putting furniture to the side, and covering it. I lived there, but I had to go out in the day time; however, my son was home at that time, because there was no school. He couldn't sleep because people were coming and going, and we had no privacy. How long it will take? Eventually, I gave my keys to the work manager and they had my keys. They broke the lock and didn't fix it. The Landlord eventually replaced it. I lost a few days of my work, because I didn't want strangers coming and going in my apartment. I was there for a few days with them in the beginning, because I thought they would change my windows and leave. They had to measure the windows. I asked for a day off, but they were not very happy about it. I had to go back to work, so I gave them my keys.

The Tenant said that when she agreed to rent it, she knew the rental unit would be renovated, "...but they didn't say they would use my apartment for the whole project, and use my patio, so that I can't use it. I cannot use it; all I see is mess."

The Agent said that the construction company approached the Tenant on June 21, 2019, to discuss their gaining access to her unit for "mock up for windows and doors, which is an industry standard for building envelope renewal projects. . . . this process included temporary removal of some exterior wallboards but not the insulation covering the building fabric."

The Agent submitted "Exhibit D", which provides a list of dates the contractor accessed the Tenant's unit in June through August 2019. These dates included the following:

June 21	Discuss action plan with tenant
June 27	Remove drywall returns from the window and doors (except large bay window)
July 4	Remove large bay window for [window company] to complete for field measurements
August 2	Review suite openings to gauge access/egress for window and door delivery, installation
August 8	Window & Sliding Door Installation
August 9	Window & Sliding Door Installation
August 12	Window & Sliding Door Installation
August 13	Window & Sliding Door Installation
August 14	Window & Sliding Door Installation
August 15	Window & Sliding Door Installation
August 16	Window & Sliding Door Installation

August 19	Window & Sliding Door Installation
August 20	Window & Sliding Door Installation
August 21	Window & Sliding Door Installation
TBD	One Patio Swing Door (Type W03-1) "On Hold" pending building code review.
August 22 – August 28 – Finishing – New Wood Sill, Drywall Repairs & Paint	

However, the Parties indicated that the workers were accessing the rental unit throughout July, as well, in preparation for the work in August 2019.

Compensation Already Provided

The Parties agreed that the Landlord has offered the Tenants compensation along the way. He said he offered to reduce the rent by \$200.00 per month for the disruption, starting in August 2019, but he said the Tenant was not happy with that. The Landlord said he gave the Tenant half a month's rent reduction in August 2019. He said the Tenant has also had her rent reduced by \$500.00 per month since February 2020, but the Tenant said: "I still pay \$2,500 with the high cost of heat."

The Agent said:

I know that it hasn't been very pleasant for [the Tenant], and I can appreciate that she should be given something for the disturbance, and the owner gave her this amount off. We're only months away from this work to be completed. The work is going to be completed in September, but it may be sooner. She's going to be paying well below market value at \$2,500 per month. And the heating bills will be lower.

#2 ORDER FOR LANDLORD TO COMPLY WITH ACT

Kitchen Cabinets

The Tenant said that the kitchen cabinets "are old and smelly – they were painted, but they still smell from mould or moisture – the paint did not help." The Landlord said that when the Tenant moved in: "She said there was an odour from lower cabinets; I didn't notice any. They're made of press board and getting older, so would have a slight odour. The owner didn't want to replace them, so I got a fellow to put [a coating] and then paint on it. [The Tenant] said after that it seemed okay."

The Agent said he also noticed that the dryer hose was not attached in the laundry room. “That’s why you had the smell coming in the kitchen, and all the hot air was coming into the kitchen area. This went on in the early stage and he put it back. It wasn’t going on for seven months – maybe the first several months. She should have reported that the hose had come off. I have no idea what’s wrong.” The Agent said that the cabinets would be the originals from when it was built about 32 to 33 years ago.

Leak Beneath Bathroom Sink

The Tenant also said that the bathroom sink leaks underneath in the cabinet. She said an attempt to fix it was made in the summer or autumn – before September or October; however, she said it is still leaking. The Tenant said: “I was looking for something in a basket under the sink, and everything was wet. Everything was damaged in the cabinet. Now I don’t want anyone to come. I have a container to collect water there. It doesn’t affect me, because I’m still using it. It is an inconvenience, though, because of collecting and emptying the water.”

The Landlord said that the Tenant: “...mentioned it to me recently that it started to leak again. But she probably doesn’t want anyone going in there. I hesitate to get someone in there because of the corona virus. I’m prepared to get it repaired, but you are not comfortable with workers coming in.”

Dishwasher

The Tenant also said that the dishwasher had not worked since she moved in. She said:

It’s not an emergency, but it should be working, because I’m paying for it. He hired a handyman, in the building who ordered a part. It took a long time to get it, he put it in and shortly after that another part was gone and is still on order.

The Landlord said: “[The dishwasher] wouldn’t lock when she moved in, and so at the time, I was thinking that I had several people look at it. Finally, a handyman in the building ordered a part, it took a long time to get it, but he put it in, and shortly after, another part was gone and is still on order. I spent about \$300.00 to fix that.”

Heat in Rental Unit

The Tenant said that her heating costs are more than expected and have been worsened by the construction and holes throughout the rental unit. She said: “Since

they removed the outside walls, a draft is coming in. It is cold even with the heat on. There has been an opening in the closet in the master bedroom for a very long time, and I mentioned it to you about a month ago, but nothing was done yet. Cold is coming in, and some rodents come in, as well.” She said she set all of this out in an email to the Agent at the end of March 2020.

The Agent said:

Before you signed the lease, I said the heating bill is going to be high in the winter. I never lived there, and so I don’t know what it would be. [The electricity company] wouldn’t tell you what another tenant paid. That’s for all your appliances and for heating.

The Landlord referred to Exhibit “B” in his submissions, which is an email dated February 23, 2020, from another resident of the building, S.L. The Landlord said this “shows the Tenant knew that the heating would be expensive.”

In Exhibit “B”, the other tenant said:

I’m sending you this email as a resident in [residential property address]. When I talked to you last week you had mentioned that your tenant in unit [rental unit] said she was not aware that the winter heating bills in her unit would be so large.

I beg to differ. In July last year she was outside in the front, smoking, and I was chatting with her, and I mentioned that our building would be doing a building upgrade, because the exterior is leaky and its poorly insulated. She mentioned that she was aware that her unit was very expensive to heat in the winter and it would cost \$400 a month. She didn’t say how she knew this information but she definitely was aware when I chatted with her in the summer that the upcoming winter heating bills would be large.

I remember mentioning that I didn’t know how much her bills would be, but I agreed with her that they would be large due to the poor insulation of our building. I said that after the building remediation project was completed things would be much better.

I just wanted to clarify that for you as you seemed frustrated that your tenant is saying she wasn’t aware of these big bills.

Analysis

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

Section 27 of the Act sets out a landlord's obligations regarding the termination and restriction of services or facilities. It requires that a landlord must not terminate or restrict a service or facility, if it is "essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement."

Section 28 of the Act sets out a tenant's right to quiet enjoyment of the rental unit, and states that tenants are entitled to "reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, subject only the landlord's right to enter the rental unit in accordance with section 29, and use of the common areas for reasonable and lawful purposes, free from significant interference."

Section 32 of the Act requires that a landlord maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, which make it suitable for occupation by the tenant.

Section 67 of the Act allows for an arbitrator to determine the amount of compensation to be awarded to a party, if another party has not complied with the Act, the regulations or a tenancy agreement.

Policy Guideline #6 ("PG #6"), "Entitlement to Quiet Enjoyment" states:

A. LEGISLATIVE FRAMEWORK

Under section 28 of the *Residential Tenancy Act* (RTA), a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession, subject to the landlord's right of entry under the Legislation; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

B. 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.

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. 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.

#1 ORDER TO REDUCE RENT FOR REPAIRS

When I consider the evidence before me, overall, I find that this renovation project significantly affected the Tenant's use of her rental unit, given the different aspects of the tenancy that were affected by frequent and ongoing interference or unreasonable disturbances. I find that the breach of quiet enjoyment amounted to a substantial interference with the Tenant's use of the rental unit. I find that the Landlord did little to

minimize the disruption to the Tenant in this regard. Further, I find that the intrusions from the construction started in July 2019 and continued as of the hearing date in April 2020.

Patio Usage

The evidence before me indicates that the Tenant's rental unit was used as a staging area or measurement site for the construction company renovating the residential property. I find that the Parties' evidence was consistent in that the Tenant did not have use of her patio for the summer and fall months in 2019, which she said she would have used, if she could have. It is not a small patio, but it runs the length of the rental unit; therefore, I find it is a sizeable space that the Tenant paid for, but was not able to use and enjoy.

Based on the evidence before me in this matter, I find that the elimination of the patio from the Tenant's useable space affected her tenancy in July 2019 through to approximately the end of October 2019 or for five months. The Landlord said: "We're only months away from this work to be completed." I find this to mean that the Tenant will continue to suffer from the noise and other intrusion into her rental unit for months to come. However, I cannot award compensation for damage or loss that has not yet taken place.

I find that the Tenant suffered a 15% decrease in the quiet enjoyment of her rental unit from the inaccessibility of the patio for the four months noted in 2019 and for the current month in 2020 for a total of six months. Fifteen percent of the Tenant's \$2,500.00 rent is \$375.00. I, therefore, award the Tenant with recovery of **\$2,250.00** for six months at \$375.00 per month, pursuant to section 67 of the Act.

Noise

The evidence before me is that the construction was ongoing between 7:30 a.m. until 3:30 p.m., Monday to Friday. The Tenant said that she missed work for a few days initially, as she did not want the workers in her rental unit without her being there. However, the Tenant's son was there and was unable to sleep with the construction noise in the rental unit and residential property. The Tenant said: "It was very stressful and depressing", especially when she was sick with this disturbance going on.

I appreciate that the noise would be inescapable in the rental unit for instances when the Tenant and/or her son were home. However, the Tenant indicated that she is

usually away from the rental unit during the day for work. Accordingly, I find that the noise did not affect the Tenant's enjoyment of the rental unit in the evening or on weekends.

Based on the evidence before me on this matter, I find it appropriate to award the Tenant with 10% of her rent from the time the construction started in July 2019 to April 2020, the month of the hearing, as the construction was still ongoing at that time. Accordingly, I award the Tenant 10% or \$250.00 per month from the Landlord for ten months or **\$2,500.00**, pursuant to section 67 of the Act.

Plywood Over Windows

I find that the plywood has been covering the rental unit windows since September 2019, until March 2020. The plywood remains on the master bedroom windows. I find that being able to see out one's windows is a reasonable expectation of full use of a rental unit. I find that it is consistent with common sense and ordinary human experience that being able to see the sun and benefit from its uplifting value is important for a person's health and well-being. I find that this reduced the value of the rental unit by 10% or by \$250.00 per month for seven months totalling **\$1,750.00**, which I award the Tenant from the Landlord, pursuant to section 67 of the Act.

Workers Accessing Suite

Based on the evidence before me, overall, I find that the situation in the rental unit for July and August 2019 meant that the Tenants did not have privacy or cleanliness in their rental unit, because of the presence of construction workers and their materials on most weekdays. I also find that the Tenants would have endured the mess and other disturbances during the weekend, as well. I find that the Tenants' quiet enjoyment of the rental unit was virtually non-existent, as a result of the renovations to the residential property. I find that the Tenants deserve to be reimbursed for half of their rent paid in July, August, and September 2019. I, therefore, award the Tenant recovery of **\$3,750.00** from the Landlord for this aspect of the Tenant's claim.

#2 ORDER FOR LANDLORD TO COMPLY WITH ACT

Kitchen Cabinets

Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of

building elements for determining damages. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost of the replacement.

In PG #40, the useful life of cabinets is 25 years. The evidence before me is that the cabinets are approximately 32 years old, therefore, they have used up all of their useful life. The evidence before me is that the cabinets smelled bad from the start of the tenancy. The Agent tried to eliminate the smell by painting them, but according to the Tenant, that did not work.

I find that the kitchen cabinets are beyond their useful life. Landlords and tenants' rights and obligations for repairs are set out in sections 32 and 37 of the Act. Section 32 states:

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.

I find that the kitchen cabinets have outlived their useful life and have depreciated to a state that renders them unsuitable for use or occupation by a tenant. I find the cabinets fail to comply with a state of decoration and repair that complies with health, safety and housing standards required by law.

I find that the Landlord has failed to maintain the kitchen cabinets in a state of decoration and repair having regard to the age of the residential property. As such, I **order** the Landlord to replace the kitchen cabinets in the rental unit with new cabinets, as soon as possible, in coordination with the Tenant's schedule, pursuant to section 32 of the Act.

Given the current health emergency in the world, the Landlord has until September 30, 2020, to replace the kitchen cabinets with new ones. However, **if this has not been completed by September 30, 2020, the Tenant is authorized to deduct \$125.00 per**

month from her rent starting on October 1, 2020, and continuing until the Landlord has fully installed the new kitchen cabinets in the rental unit. This order is made on the condition that the Tenant has allowed the Landlord via email message to have estimators, construction workers and/or others into the rental unit to arrange for the cabinet replacement by at least August 1, 2020. The Parties may apply to the RTB for clarification on this order, should they disagree on access to the rental unit in this matter.

Leak Beneath Bathroom Sink

I order the Landlord to have the leak fixed in the bathroom, once the Tenant is comfortable allowing maintenance personnel into the rental unit, given the state of emergency from Covid-19. The Landlord must arrange this repair to happen within 20 weekdays of the Tenant emailing the Landlord that she is comfortable having maintenance people in the rental unit for this repair. The Landlord will arrange to have a certified, professional plumber do this repair work. If this work is not done to these specifications, the **Tenant is authorized to deduct \$50.00 per month from her rent** starting in the next month after the 20 weekdays have passed, if the work is not complete. The Tenant must resume paying her regular rental amount, once this repair work is complete.

Dishwasher

The Landlord is Ordered to arrange to have the dishwasher fixed, once the part arrives and, once the Tenant is comfortable allowing maintenance personnel into the rental unit. The Landlord must arrange this repair to happen after the part arrives, and within 10 weekdays of the Tenant emailing the Landlord that she is comfortable having a maintenance person in the rental unit for this repair. If this work is not done to these specifications, the **Tenant is authorized to deduct \$25.00 per month from her rent** starting in the next month after the 10 weekdays have passed, if the work is not complete. The Tenant must resume paying her regular rental amount, once this repair work is complete.

Heat in Rental Unit

The Landlord is ordered to arrange to have the holes fixed throughout the rental unit, including an opening in the master bedroom closet, once the Tenant is comfortable allowing maintenance personnel into the rental unit. The Landlord must arrange this repair to happen within 15 weekdays of the Tenant emailing the Landlord that she is

comfortable having maintenance people in the rental unit for this repair. If this work is not done to these specifications, the **Tenant is authorized to deduct \$15.00 per month from her rent** starting in the next month after the 15 weekdays have passed, if the work is not complete. The Tenant must resume paying her regular rental amount, once this repair work is complete.

Summary and Set Off

In addition to the maintenance Ordered, with which the Landlord must comply, the Tenants are awarded the following monetary compensation, as set out above:

Patio	\$2,250.00
Noise	\$2,500.00
Workers	<u>\$3,750.00</u>
	<u>\$8,500.00</u>

Less, compensation already paid by the Landlord to the Tenant:

August 2019	\$1,250.00
February 2020	\$ 500.00
March 2020	\$ 500.00
April 2020	<u>\$ 500.00</u>
	<u>\$2,750.00</u>

Accordingly, the Tenants are awarded a net amount of **\$5,750.00** from the Landlord for the above noted claims. The Tenants are authorized to reduce their rent by the appropriate amount in the coming months in satisfaction of this Monetary Order, in addition to any rent reductions that arise from the maintenance Orders.

Conclusion

The Tenants are successful in their Application for a rent reduction in the amount of **\$5,750.00**, as the Landlord did not protect the Tenants' right to quiet enjoyment of the rental unit, as required by section 28 of the Act.

The Tenants are also successful in their claim for repairs to the rental unit, which are also set out above regarding the kitchen cabinets, the bathroom sink leak, the

dishwasher, and heat in the rental unit. The parameters for these repairs are set out above. The Parties may apply to the RTB for clarification of these Orders in circumstances where any reasonable uncertainty arises.

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: May 6, 2020

Residential Tenancy Branch