Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lico Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on May 26, 2020. The Tenant applied for compensation for monetary loss or other money owed, pursuant to the *Residential Tenancy Act* (the "*Act*").

The Landlord (agent of) and the Tenant both attended the hearing. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord acknowledged receipt of the Tenant's application and evidence. The Tenant confirmed receipt of the Landlord's evidence. Neither party took issue with the service of these documents.

I have reviewed all oral and written evidence 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.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to

determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

The tenancy agreement was provided into evidence, which shows that the tenancy started on December 1, 2012. Monthly rent was set at $1,400.00 and was due on the first of the month. Both parties agreed that rent was increased to $1,440.00 in October 2015, and then to $1,495.00 in May of 2017. The tenancy ended on January 14, 2018, which is the date the rental unit flooded. Both parties agreed that the tenancy was frustrated as of that date, as there were significant repairs required. The Tenant paid full rent for January 2018, despite only staying there for half the month. The Tenant also paid rent for February 2018, despite not living there because he was not sure if he would be able to move back in at that point.

On the Tenant's application, he indicated he is seeking $12,102.50 for 3 items. The Tenant attached a monetary order worksheet to show how he arrived at this amount:

1) $2,242.50 – Rent rebate for January and February 2018

The Tenant stated that he is seeking half of January's rent back plus all of February's rent, totalling $2,242.50. The Tenant is seeking this amount because the rental unit flooded and he was not able to live in the unit after that point.

The Landlord agreed in the hearing that she would pay the Tenant this amount, and there was no dispute over her repaying this rent to the Tenant.

2) $4,860.00 – Electricity Overpayment

The Tenant explained that this rental unit is one half of a duplex house. The other half of the duplex has 3 rental units and has it's own address. This rental unit has its own hydro meter, and mailing address. The Tenant stated that in the first couple of weeks he noticed that the plumbing lines for the two hot water tanks for the whole house were interconnected and although his hot water tank was connected to his separate electrical panel which only he paid for, the water lines joined together. As a result, the Tenant states he overpaid for his electricity bill because the power he paid for went to heat hot water for the whole building. The Tenant stated he was assured at the start of the tenancy that his utilities were fully separated, as was the billing. The Landlord (agent) did not dispute that this representation was made, as she was not the agent at that time.

The Tenant provide a couple of photos of the two hot water tanks, and some of the surrounding pipes to show that the tanks were interconnected in terms of water lines.

The Landlord explained that this rental unit has its own hydro meter, and everything operates off electricity for this unit. Whereas the other side of the duplex, consisting of 3 units, has gas as well as electricity. The Landlord stated that the other side has it's own hot water tank (powered by gas). The Landlord provided an invoice from the recent electrical inspection she had by an electrician. It states that there are in fact two distinct panels, and two meters, with no crossed wiring between the units. The report did not speak to whether or not the pipes were interconnected.

The Tenant provided several emails he had with the Landlord (agents of) regarding the hot water issue. The Tenant brought this issue up in an email on January 9, 2013, but nothing was done to fix the issue. The Tenant stated that nothing was done by any of the Landlord's agents from the time he brought the issue up until the end of the tenancy. As such, the Tenant is seeking to recover $4,860.00 in electricity overpayments, based on estimates and calculations he made. In the Tenants written statement, he stated that he paid approximately $74.85 extra per month for 5 years ($74.85 x 60 months), as well as $368.87 for January and February 2018, which adds up to $4,860.00.

The Tenant attached an email he sent to the Landlord to try and lay out how he calculated the amounts. The Tenant took average usage numbers he found, number of residents in the entire building, and average hot water usage per day per person. The Tenant estimated a cost per person, per month, based on general usage estimates. The Tenant laid out in this email that he would be out an estimated $81.00 per month unless the hot water tanks were separated out properly.

During the hearing, the Tenant attempted to explain how he calculated the amount he is seeking and was not able to clearly articulate how he arrived at the amounts and only briefly referred to his email to the Landlord from 2013. The Tenant also pointed to photos of the hot water tanks from different angles. The Tenant labelled some of the different pipes, and tried to show which were cold water, hot water, and which lines went to each unit. The photos show some interconnection of the water lines. It appears to show that each hot water tank is connected to the same line, and each tank supplies water into a shared system.

The tenancy agreement provided into evidence shows that the Tenant is responsible for his "own electricity".

3) $5,000.00 – Loss of Quiet Enjoyment

The Tenant provided a written overview of his claim for loss of quiet enjoyment and claims that the suite required constant repair and this impacted his enjoyment of the unit. In this written portion, he noted that there were 4 main items:

A) December 2012 – noise issues with upstairs tenants in the early morning hours
B) September 2015 – January 2016 – dogs from the adjacent rental unit defecated on Tenants lawn, barked consistently, and not controlled
C) January 2016 – contractors renovating adjacent suite without notice, creating noise.
D) January 2017 – December 2017 – issues with mice

During the hearing, the Tenant was asked to explain how he arrived at $5,000.00 for his claim for quiet enjoyment, and he was asked to explain what it was based upon. The Tenant articulated some frustrations with the Landlord taking a long time to do repairs, some frustrations with the barking dogs next door, and a couple of weekends where the people above him made noise late at night. However, the Tenant stated he “couldn’t recall” what he laid out in his application. The Tenant took a moment to try to collect his thoughts regarding his claim for loss of quiet enjoyment, but after thinking about it for a few minutes, he responded by saying he “has nothing to say” and that he had no explanation for the items he put in his written statement and application. The Tenant did not say anything further. The Tenant did not speak to most of the items initially listed on his written application.

The Landlord stated that she recalls the Tenant complaining about the dogs, and she indicated that she immediately had discussions with the other Tenant about the issue. The Landlord stated she did her best to try to remedy the situation by speaking to the pet owners to correct the behaviour but ultimately the dog owners moved out shortly after the issues were raised. The Landlord denies that she was doing constant repairs or that they were excessive or unreasonable. The Landlord feels the Tenants claim on this matter is unfounded.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I will address the items on the Tenant's application in the same order as they were laid out on his worksheet, and the same order as they were laid out above.

1) $2,242.50 – Rent rebate for January and February 2018

The Tenant stated that he is seeking half of January's rent back plus all of February's rent, totalling $2,242.50. The Tenant is seeking this amount because the rental unit flooded and he was not able to live in the unit after that point, despite paying rent for this period. The Landlord agreed to pay this amount. As the parties agreed on this item, I find no analysis is required. I award this item, in full, as both parties agree to the amount.

2) $4,860.00 – Electricity Overpayment

I note the tenancy agreement clearly indicates that the Tenant is responsible for his own electricity bills. I find the manner in which this item is laid out, that he is responsible for his "own electricity", indicates he has to pay for his own electricity, but it does not mean he is responsible for paying for other people's consumption. I note this is a duplex with a shared utility room. I also note there are two different hot water tanks, one for each unit. One of the tanks is powered by gas, the other by electricity. I have reviewed the photos provided by the Tenant, and I find it more likely than not that these tanks are in fact

interconnected in terms of plumbing lines, and both supply hot water to the same line, which feeds into both sides. The Landlord only spoke to the electrical hook ups, and not to how they were plumbed. I accept that the electricity and gas billing is separate for these tanks, and that each unit is responsible for one of the tanks. The other half of the duplex (consisting of 3 units) is responsible for paying for gas charges to heat one tank, and this rental unit is responsible for paying for electricity to heat the other tank. However, it appears the issue is that the hot water lines conjoin and feed into the same system, which would likely mean that both units draw hot water from a combination of water from both tanks.

It appears the main issue is that the Tenant was concerned he was overpaying his share of costs to heat the hot water because his half of the duplex was only one rental unit, whereas the other side had 3 different units, and more people. The Tenant also appears concerned that electricity costs are more expensive than gas, and his tank is larger, and more costly to run.

I find the way the water lines are linked is problematic for several reasons. First, although the Tenant's tenancy agreement indicates he has to pay for his own electricity, in practice he had to pay for amounts above and beyond what he used. I accept that the Tenant was told his utilities were fully separated out at the time he signed the tenancy agreement. I find it is a breach of the tenancy agreement, to require the Tenant to subsidize the hot water usage of several other units, while stating he was responsible for his "own" consumption. The inequities would be negligible if there wasn't a substantial discrepancy with the number of rental units on each side of the duplex. It seems likely that the other unit would have used more than 50% of the hot water, purely based on the fact it had 3 units, versus the one on this side.

I do not find the Landlord's letter from her electrician is helpful. I accept that there is no link in power between the two units, in terms of electricity or gas lines. However, the issue is about the plumbing lines, which this letter does not address.

All that being said, I find the Tenant's calculations of what is owed is difficult to follow, and he did not sufficiently explain the calculations in the hearing. It is also completely based on generalized estimates, and not actual usage. The onus is on the applicant to demonstrate the value of the loss, and I do not find the Tenant has sufficiently done this. Although the calculations were complex, they are not rooted in actual usage such that I could have any degree of certainty that its representative of what his loss may have been.

Generally, an arbitrator will award damages where the value of the loss can be clearly established. However, an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

> "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case, I find a nominal award is appropriate, given the Tenant likely paid more than his fair share to heat the hot water, and given the impossibility of determining actual loss. The Landlord could have routed the plumbing differently, and/or had a different tenancy agreement structure, which could have mitigated some of the inequity. I note the Tenant lived in the unit for 5 years, and he is seeking nearly $5,000.00. However, I do not find the evidence sufficiently establishes this value. I award the Tenant a nominal amount of $500.00.

3) $5,000.00 – Loss of Quiet Enjoyment

Loss of Quiet Enjoyment

Section 28 of the Act, states that 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;
(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I turn to the following two Residential Tenancy Branch Policy Guidelines:

> <u>The Residential Tenancy Branch Policy Guideline #16</u>
> (Compensation for Damage or Loss)
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> Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:
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> - Loss of access to any part of the residential property provided under a tenancy
> agreement;
> - Loss of a service or facility provided under a tenancy agreement;

- **Loss of quiet enjoyment;**
- Loss of rental income that was to be received under a tenancy agreement and costs associated; and,
- Damage to a person, including both physical and mental

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.

The Residential Tenancy Branch Policy Guideline # 6
(Entitlement to 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.

I have considered the Tenant's submissions and evidence. I note that during the hearing the Tenant was asked to present, explain and support how he arrived at his request for $5,000.00. The Tenant spoke to some issues with the neighbouring unit's dogs, his neighbours upstairs being loud, and the Landlord taking too long to make repairs. However, he did not elaborate how this impacted him, such that I could find it unreasonably disturbed him, impacted his privacy in a material way, or caused him a loss of quiet enjoyment. When asked to explain his application on this point, the Tenant stated he couldn't recall, and eventually stated he had nothing else to say. I found the Tenant's statements on this matter lacked sufficient detail and clarity. I find the Tenant has failed to sufficiently demonstrate that any of the issues he put forward were such that he his rights under section 28 of the Act were breached. I dismiss this item in full.

As the Tenant was partly successful with his application, I also grant him the recovery of the filing fee ($100.00) against the Landlord, pursuant to section 72 of the Act.

In summary, I grant the monetary order based on the following:

Claim	**Amount**
Rent rebate	$2,242.50
Nominal award	$500.00

Filing fee	$100.00
TOTAL:	**$2,842.50**

Conclusion

I grant the Tenant a monetary order in the amount of $2,842.50. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced 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: May 28, 2020

Residential Tenancy Branch