



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RP, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for

1. monetary order for damage or compensation pursuant to section 67 of the *Act*.
2. order for regular repairs pursuant to sections 32 and 62 of the *Act*.
3. recovery of the filing fee from the landlord pursuant to section 72 of the *Act*.

The landlord's representatives LL, LT, CL and the tenant SL attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord LL confirmed in the previous interim hearing dated May 26, 2020 she was the representative for the landlord named Company in this application and that she had authority to speak on its behalf at this hearing. This hearing lasted a further 85 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenants' application for Dispute Resolution and receipt of their evidentiary package after the documents were sent by Canada Post registered mail on April 9, 2020. Pursuant to sections 88 and 89 of the *Act*, the landlord is found to have been served with all the documents. A copy of the registered mailing tracking number is listed on the cover page of this decision.

The tenants confirmed receipt of the landlord's evidentiary package after it was emailed to them in accordance with the requirements of the *Emergency Program Act* and the March 30, 2020 Executive Director of the Residential Tenancy Branch's - *Director's Order* respecting email service for documents described in sections 88 and 89 of the *Act*. I find that the tenants were sufficiently served pursuant to section 71 of the *Act*.

Issues to be Decided

Are the tenants entitled to a monetary award for compensation for damage or loss pursuant to section 67 of the *Act*?

Are the tenants entitled to an order to regular rent repairs pursuant to sections 32 and 62 of the *Act*?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claim, and my findings are set out below.

The tenancy commenced in January 2010. The tenants pay a monthly rent of \$1,439.00 due on the first of each month. At the outset of the tenancy, the tenants paid a security deposit in the amount of \$640.00 and a pet damage deposit of \$340.00 which the landlord holds in Trust. A copy of the signed tenancy agreement is submitted in evidence.

The landlord and tenants provided significant evidentiary package including audio recordings, photographs, text messages, and emails. The tenants are claiming a monetary amount of \$12,717.01 representing a claim for damages/compensation and a retroactive reduction in rent. The tenant SL characterized their claim as loss of quiet enjoyment due to a windstorm in December 2016 and a roof leak in March 2018 resulting in water damage to their rental unit.

The landlord affirmed that there was a windstorm on December 3, 2016 which resulted in several rental units incurring water damage in the building and a second major water leak from the roof in March 2018.

Both parties agreed that the renovations have taken longer than twelve months. The tenant SL claimed that there was an extensive delay in the renovations and their unit was left until last, whilst the landlord affirmed that they had provided an estimate only.

The landlord LL affirmed that construction was delayed for a number of reasons, there were several rental units that required renovations and most notably the weather over the Winter period.

The landlord LL affirmed that the insurance was only covering part of the damage and that they were paying for part of the renovations themselves, and the total cost of the project was over \$300,000.00. The landlord affirmed that they had tried their best to accommodate the tenant SL, but he constantly complained during the renovations. For example, he complained about the delay, the landlord's contractor's but failed to remove his belongings from his rental unit despite being provided a second unit B.

The landlord LL affirmed that the tenants insisted on staying in their rental unit and refused to sign a waiver regarding damage to furniture or harm to themselves during the construction. The landlord affirmed that tenant SL was contacting the contractor and insurance company directly and was making life difficult for them.

The landlord affirmed that the tenants had utilised two units during the renovations and were offered unit B which the tenants also utilised, causing delays in the renovations and construction as the tenants refused to move out or take their personal belongings out of rental unit A

The landlord affirmed the tenants had failed to return the keys for unit B. The landlord confirmed that they had to change the locks to the second unit and submitted a receipt as evidence. The landlord testified that they were going to proceed with a separate monetary application to the RTB on the basis that the tenants had been "using two rental units" and had failed to return the keys to the rental unit.

The tenant SL affirmed that he and tenant RG lived amongst the ongoing repairs in the rental unit because they believed that if they moved out to another unit in the building, the landlord was not going to allow them back into the original rental unit after the renovations and increase their rent substantially. The tenant SL affirmed they enjoyed a view from their unit.

The tenant SL denied that he refused to move to the second unit. He affirmed most of his belongings were packed in boxes to avoid any damage by the contractor and submitted photographs in evidence. The tenant SL affirmed that some of the contractors had 'used and stepped on his towels" and "bathmat" but denied holding onto a set of keys for the second unit. He affirmed that he handed the keys back to the contractor.

The landlord's representative LT testified that they responded quickly, efficiently to the tenants' complaints, repairing the major leak, conducting troubleshooting, replacing kitchen cabinets and adjusting with the tenant's SL request at each stage of the renovation. The landlord stated that the occupants of other rental units in the building did not have consistent ongoing complaints.

The tenant SL affirmed that most of the tenants in the other rental units had vacated the rental units and failed to return as the landlord had taken an excessive amount of time in conducting the renovations. He affirmed there were scratches to some of the kitchen cabinets and there was a 1mm gap between one of the kitchen cabinets. The landlord affirmed they had replaced the cabinets again for the tenant with some of the original cabinets at the tenant's request.

Both parties agreed that the major repairs to the tenants' rental unit have now been completed including the kitchen and door frame however, there remained a few minor issues such as the scratches to the kitchen cabinets.

The tenants have provided a comprehensive chart submitted in evidence of compensation they believed they are entitled to between the periods of the rainstorm in 2016, and the major leak in March 2018 to the current period.

The tenant SL affirmed in view of other RTB decisions, they are seeking a rent reduction and compensation of \$12,717.01 for loss of quiet enjoyment during the landlord's renovations between these periods of December 3, 2016 to December 18, 2018. The tenant SL affirmed that the contractors also damaged a bathmat which he has replaced at the cost of \$41.60 and submitted a copy of the receipt in evidence.

The tenants have applied for a monetary application based on the fact that the landlord delayed construction resulting in a disturbance, loss of the tenants' rights to quiet enjoyment of the rental unit and the fact that they were denied the essential services such as the kitchen during the period of time and during the second major leak for the period of April 12 to May 28, 2018.

In April 2018, the landlord offered the tenants a package to move out comprising of two months free rent, moving fee and deposits whilst the repairs were to be undertaken. The landlord LL and representative LT disputed the tenants' entitlement to any compensation or rent reduction for a loss of enjoyment.

Analysis

The parties submitted considerable oral and documentary evidence. I will not refer to all the evidence. I will refer only to the relevant evidence and testimonies by the parties.

The testimony and evidence of the parties is conflicting regarding the extent of the repairs and renovation. The onus is on the party making the claim to show on a balance of probabilities that there has been a loss of quiet enjoyment and their entitlement to compensation.

The tenants have applied for a monetary sum of \$12,717.01 for loss of quiet enjoyment during the landlord's renovations between the period of December 3, 2016 to December 18, 2018. Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The tenants have applied for a monetary application based on the fact that the landlord delayed construction resulting in disturbance and loss of the tenants' rights to quiet enjoyment of the rental unit and the fact that they were denied the essential services including the kitchen during the period of time and during the second major leak from the period of April 12 to May 28, 2018.

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.*

Residential Tenancy Policy Guideline 6 states the following, in part, with respect 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. 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.

Although I accept that the tenants were troubled by the renovations and delay. The tenants' right to quiet enjoyment must be balanced with the landlord's right to renovate and repair the building as a result of the leak and water damage. The tenants are expected to enjoy the result of the renovations.

While I accept that the landlord made efforts to inform the tenants about the progress of the renovation with updates on the construction, the deadlines for completion continued to extend to later dates. The tenants produced emails, texts of their inquiries into the situation, as well as photographs of the renovations and progress on their rental unit particularly during the major leak and construction from period of April 12 to May 28, 2018.

I find that the tenants are entitled to a loss of quiet enjoyment. I accept the landlord's submission that there were delays in the renovations due to winter and the bad weather. However, I find that the landlord was not forthcoming with the tenants' informing them that the renovations were expected to last over a twelve-month period.

As per Residential Tenancy Policy Guideline 16, even where the landlord has made reasonable efforts to minimize disruption to the tenant, in this case, the tenants were deprived of their own rental unit and suffered a loss of quiet enjoyment.

I accept the tenant's SL testimony that they suffered excessive delay and that despite their ongoing complaints the landlord left their rental unit last in view of the major leak in March 2018.

I find that the tenants are entitled to live in an environment free of constant, ongoing construction and renovations in order to function in activities of daily living. I find that the tenants right to quiet enjoyment under section 28 of the *Act*, was disturbed by the landlord.

An Arbitrator may make an order that past or future rent be reduced to compensate the tenants breached by the construction and delay which constitutes an unreasonable and ongoing disturbance.

Both parties agreed that the major repairs to the tenants' rental unit have now been completed including the kitchen and door frame however, there remained a few minor issues such as the scratches to the cabinets caused during the renovation, accordingly I decline to award an order for regular repairs pursuant to section 32 of the *Act* as the major repairs have now been completed by the landlord.

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an Arbitrator may make an order that past or future rent be reduced to compensate the tenant.

The tenant SL referred to another application at the Residential Tenancy Branch ("RTB"), where he claimed that other tenants were given monetary awards of 50% of the rent reduction requested. The landlord and representative LT objected, stating that the tenants should not be entitled to any rent reduction in view of the fact that the tenants were provided with another rental unit.

Where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award a reduction in rent. Where there is a termination or restriction of a service or facility due to the negligence of the landlord, and the tenant suffers damage or loss as a result of the negligence, an arbitrator may also find that the tenant is eligible for compensation for the damage or loss.

I do accept the tenant SL submissions that the renovations and construction were only expected to last for a few months.

The landlord LL provided testimony that the tenants in all five of the rental units were advised the construction and renovations were expected to take several months during the different phases.

The tenant SL provided testimony that they should be provided with a 90% rent reduction for the period of April 12 to May 28, 2018 during the major leak. I find the rent reductions below a reasonable amount for the tenants' loss. I find that the tenants had use of the second rental unit and decline to award a 90% rent reduction for this period.

I also find that the tenants had use of the essential areas of their rental unit including the kitchen, bathroom, bedrooms and access to a further rental unit B supplied by the landlord which the tenants also utilised.

Based on this, I made the following calculations based on number of days per month, (rent \$1,439.00) in determining the tenant's compensation based on loss of quiet enjoyment at a 10% rent reduction for the entire period from December 3, 2016 to December 18, 2018.

- Total rent paid from December 3, 2016 to December 18, 2018 = \$ 34,168.68
- \$34,168.68 x 10% past rent reduction = \$3,416.86
- Cost of bathmat @ \$41.60 damaged by the contractor.

Accordingly, I find that the tenants are entitled to a past rent reduction of \$3,416.86 loss of quiet enjoyment due to the ongoing renovations and delay, plus the sum of \$41.60 for the bathmat damaged during the construction.

As the tenants were successful in their application, I find that they entitled to recover the \$100.00 filing fee from the landlord.

Item	Amount
Loss in the Value of this Tenancy from December 3, 2016 to December 2018	\$3,416.86
Bathmat	\$41.60
Filing fee	\$100.00
Total	\$3,558.46

Conclusion

I issue a monetary award for **\$ 3,558.46** in the tenants' favour which allows the tenants' a retroactive rent reduction for the loss in the value of their tenancy, including the bathmat replacement and the filing fee.

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*.

July 16, 2020

Residential Tenancy Branch