



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD, MNDCT, FFT**

Introduction

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

- An order for the landlord to return the security deposit pursuant to section 38;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

CR attended for the tenants ("the tenant"). TL attended for the landlords ("the landlord"). The parties were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence.

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

The parties explained that there are two other RTB cases, reference to the file numbers appearing on the first page. The parties agreed that the most recent claim is an application by the landlord for a monetary order for damages and authorization to apply the security deposit to the monetary award.

As the determination of entitlement to the security deposit is the subject of another proceeding, the tenant withdrew his request for its return.

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The tenant is seeking a monetary award of \$3,685.00 for loss of quiet enjoyment.

A written tenancy agreement was submitted. The tenancy started June 01, 2017 and was for a fixed term ending August 31, 2017. The parties agreed the tenancy then became a month-to-month tenancy. The rent was originally \$1,100.00 per month. The parties agreed rent at the end was \$1,127.50. The agreement included a one-page addendum. The tenant paid a security deposit of \$550.00 which is held by the landlord.

The parties agreed the tenant vacated the rental unit at the end of November 2019. The unit is part of a four-plex with a back yard. The tenant testified that the unit was occupied by two adults and two small children. No condition inspection was conducted on moving in or moving out. Both parties submitted copies of correspondence and photographs.

The tenant's claim for loss of quiet enjoyment relates to loss of use of a storage area in the unit and loss of use of a back yard. Each is addressed.

Loss of Storage Area

The parties agreed that the tenant informed the landlord in March of 2018 that the water tank was leaking and there was moisture in the unit; the landlord quickly came to look at it. The parties' version of events then differs.

The tenant stated that the leak had soaked a piece of carpet beneath the water tank which he removed and discarded, without showing it to the landlord. He claimed the area of approximately 40 square feet adjacent to the tank became and remained unusable for storage for the remaining 16 months of the tenancy. The tenant explained that there was storage area in the unit; however, the area available to the tenants was reduced.

Based on a floor area of 1,000 square feet, the tenant calculated a loss of total area as 4%. When multiplied by the rent paid, the tenant estimated his compensable loss of use was \$220.00.

The tenant also testified that because the landlord failed to fix the problem, the tenant spent an average of 5 minutes a week checking on the tank and wiping condensation from the surface; based on an hourly rate of \$35.00, the tenant calculated his services as having a compensable value of \$880.00 for the remainder of the tenancy.

In short, the tenant claims \$1,100.00 from the landlord as compensation for loss of time and use for the landlord's failure to properly maintain the tank. The tenant claimed the landlord did not do enough to address the situation.

The landlord's interpretation is markedly different. In email correspondence between the parties, the tenant expressed his concern about the moisture and the landlord asked pertinent questions. The landlord testified that his early inspection revealed nothing wrong with the tank; his observation was that the floor was dry. The landlord stated that the tank continued to work properly for the remainder of the tenancy. The tenant acknowledged the tenant did not hire a repairperson himself.

The landlord testified that the tank was not serviced during or after the tenancy because it was not necessary. The unit is currently occupied by new tenants who are using the tank without any problems.

When the tenants vacated, the landlord testified he observed moisture damage in the unit. He testified that a plumber informed him that there was excessive moisture in the unit; the likely source was the tenants air-drying of their laundry. Based on this opinion, the landlord concluded that the moisture in the air may have condensed on the surface of the tank and caused moisture droplets to appear. The landlord testified he has brought an application against the

The tenant acknowledged that his family air-dried clothing sometime, but rejected it

caused excessive moisture.

The landlord submitted photographs of the tank taken shortly before the tenants vacated. One photograph showed considerable possessions stacked near the tank, presumably for storage. The tenant explained that the unused storage area to which his claim related was behind the tank, and therefore out of view.

Loss of Use of Back Yard

The parties agreed the tenant complained to the landlord about the condition of a fence which ran the length of the backyard. They also agreed the landlord repaired the fence in March 2019.

However, the tenant testified that he informed the landlord of the problem with the fence in November 2017; the landlord stated he was not notified until a year after that, in November 2018.

The tenant testified that he conducted temporary repairs to straighten the fence. Nevertheless, he stated that the fence was unsafe as a result of which his children were not able to play next to the fence. As a result, the tenant claimed that the family lost use of an area estimated to be 10% of the total rented area; accordingly, the tenant calculated the value of the loss of use as \$1,760.00 from the time the condition of the fence was conveyed to the landlord until the landlord repaired it. The tenant claimed the landlord did not do enough to address the situation in a timelier manner. He also claimed \$175.00 for "monitoring of broken fence".

The landlord testified that after learning of the condition of the fence in November 2018, he planned to repair it as soon as possible in the following spring. The involved contacting the neighbour, who owned the fence, and arranging for a contractor to do the work. The landlord asserted that he looked after the repairs as soon as possible in the circumstances.

The landlord submitted as evidence a copy of an email to the tenant dated December 14, 2018, which states:

The fence I would like to get fixed in the Spring, as soon as it is temporarily safe. I will need to get in contact with the neighbors to see who the actual owner if of the fence.

The landlord submitted photographs of the fence taken at the end of the tenancy. The photos show an upright fence with children's toys and a stroller nearby.

The tenant stated he was unaware of provisions of the Act with respect to repairs, particularly emergency repairs.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The relevant, admissible and important aspects of the claims and my findings are set out below. The parties submitted substantial documentary evidence, including lengthy chains of long emails which addressed many issues among all occupants and the landlord.

Section 7(1) of the Act provides that if a landlord does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord must compensate the tenant for damage or loss that results. The party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Section 22 of the *Act* deals with the tenant's right to quiet enjoyment. The section states as follows:

22. 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.

[emphasis added]

I have considered *The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment* which states as follows:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

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.

...

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). 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.

Section 60 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

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

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary

award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Tenant's claim: loss of quiet enjoyment

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1. Has the tenant incurred damage or loss?

The tenant claimed he incurred inconvenience and time relating to the loss of use of the storage area, the tank, and the back yard next to the fence.

I have considered the evidence and testimony. I found the landlord to be the more reliable witness particularly as his testimony was supported by photographs. Where the evidence of the parties conflict, I give greater weight to the landlord's testimony.

Based on the parties testimony, I find that the tank was operating well enough to function throughout the tenancy. I conclude that the tenant did not experience unreasonable inconvenience. I accept there may have been moisture which condensed on the tank from time to time, but I find the landlord inspected it in a timely and reasonable fashion, determining that no repair was needed. I find that this conclusion was reasonable in the circumstances.

Similarly, I find the landlord took reasonable steps in replacing the fence in a timely manner. I find he responded promptly to the tenant's emails and acted as quickly as reasonably possible to correct the problem.

I find the tenant has not met the burden of proof on a balance of probabilities with respect to this first part of the test regarding all of the tenant's claims.

In the circumstances, I am not satisfied that the landlord caused a substantial interference with the tenant's ordinary or lawful enjoyment of the premises that the landlord failed to take reasonable steps to address. I find the tenant has not met the burden of proof on a balance of probabilities with respect to a claim for loss of quiet enjoyment.

As the tenant must satisfy all four parts of the test, I find it is not necessary to consider the remaining three tests.

Given the tenant was not successful, I decline to award reimbursement for the filing fee.

I therefore dismiss the Application without leave to re-apply.

Conclusion

I dismiss the Application without leave to re-apply.

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: July 07, 2020

Residential Tenancy Branch