



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Jabs Construction Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for damage or compensation under the Act in the amount of \$150.00; and for an Order to reduce the rent for repairs, services or facilities agreed upon but not provided in the amount of \$1,000.00.

The Tenant, J.M., and an agent for the Landlord, C.F. ("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. Two witnesses for the Landlord, P.G. and R.V., were also present and provided affirmed testimony. During the hearing the Tenant 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

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.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to reduced rent for repairs, and if so, in what amount?

Background and Evidence

The Parties agreed that the fixed term tenancy began on December 1, 2018, running to November 30, 2019, and then operating on a month-to-month basis. The Parties agreed that the Tenants paid the Landlord a monthly rent of \$970.00, due on the first day of each month. They agreed that the Tenants paid the Landlord a security deposit of \$485.00, and no pet damage deposit. The Parties agreed that they conducted a condition inspection of the rental unit at the start of the tenancy, and that the Landlord provided the Tenants with a copy of the condition inspection report ("CIR"), which the Agent also said he uploaded into evidence.

#1 Compensation for monetary loss or other money owed → \$150.00

The Tenant said that the claim is about the balcony screen door. He said:

In the CIR it was marked as "fair", which is dubious. The entire apartment was remodelled after the last tenant moved out, but the screen door was not repaired.

When [the temporary building manager, R.V.] came to fix the screen door, it was letting cold and bugs into the house. He jury-rigged the door and assumed it was fixed. Over the next couple of months, we had food and plants ruined and had to buy bug spray.

In answer to my question about how the screen door issue ruined food, the Tenant said that the screen door would not close properly and that bugs – flies and gnats - got into the apartment and into the food.

In answer to my question about how the Tenants arrived at \$150.00 for this claim, the Tenant said that they added everything up, and thought that \$100.00 for food was fair over six months, given the exposure to bugs. He also said: "And there was the cost of

bug spray. We have no receipts, but we had dead plants and wasted food. Bugs nested in the pantry over six months – it was not fixed until May 16 - almost a year. \$150.00 is a pretty low amount.”

The Agent said:

It doesn't make sense. Bugs in the winter and food spoiling? There are no receipts. Bug spray after October 1st? They mentioned nothing to us. I first heard about it in the submissions in June.

The Tenant said:

The reason why **we didn't mention it until the Application** is that bug spray is not just for winter; there are still bugs coming in. \$150.00 for a whole year – mentioned it to [the building manager, P.G.] in August. No one came – no handyman or maintenance. They said it was fixed. There are still holes in the fly screen and it doesn't close properly. When the glass was installed, it was to be replaced.

The Agent said:

He's saying it was fixed on May 15 or 16, but now it's not fixed. Why was it not brought to the Landlord's attention? All of a sudden, it's not fixed. Thursday the maintenance guy was leaving messages to try to get it fixed. Now on the day of the hearing, we're made aware of it now. If they had notified us on May 16 – we're puzzled; it was not addressed on the 16th?

The screen issue is different than the patio door that was fixed on May 15th. It's just coming up about the screen door – it will be fixed in the next week or so, like all of previous things we fixed.

The Tenant said:

I didn't bring it up until arbitration, because there are so many issues – I feel intimidated by [P.G.]. [P.B.] was messaged on October 29, 2019 – we still need repairs. When the glass was installed, they said the screen door was jury-rigged; it still needs to be replaced. It still doesn't work. It's the same track, so not a different issue.

The Agent said:

If that's the case, why didn't the glass company notify us of that? All their documents they didn't say still needs to be fixed. No emails.

Tenant said:

Again, [the Landlord] hasn't gotten these things done. [P.G.] refused to give any information re her being messaged by us.... We tried to bring it up, but no one followed up, since we brought it to arbitration.

Agent said;

I disagree with that statement – the evidence contradicts that statement.

The Tenant said that the building manager deleted messages from the Tenants. "She didn't do anything until March." [later corrected by the Tenant to "May 2020"]

The Agent said:

Those calls were related to numerous other issues – fuses, plumbing fixtures... They were related to all types of other matters. The light fixture, the plumbing, and the mailbox were all fixed. Evidence will show we've addressed numerous issues.

You called on October 29 – we were there in two days. You told the building manager that it's okay until Spring. There were no emails, no texts after October. You agreed that we were not going to get the screen fixed until Spring. See page five of our evidence – no where does it say [the Tenants] were waiting for it to get fixed. It makes no mention of what to fix.

As soon as we received your letter of March 15 about the light.... After March 15, we couldn't get it fixed because of Covid. We followed up in April and went back to the suite because the glass company wanted pictures. The glass company went there on May 14 and 15.

Yes, there were delays in that two-month period. You spoke with maintenance. We agreed to give you \$200.00. There's a \$200.00 credit on your account. It's a very generous offer and very reasonable. It's a bit much, \$50.00 to \$100.00 is

more appropriate for the two-month delay.

The Tenant has no evidence – he submitted a quote, a few pages of text and phone calls. See his evidence ‘TenancyDispute’, the last paragraph, where he says: ‘I didn’t have access to previous text messages.’

The Tenant said that he lost his telephone, therefore, he did not have access to text messages prior to losing the phone. He also said that the building manager, P.G., “...has a habit of speaking, rather than texting.” The Tenant submitted a copy of a call log with one telephone number, the date of the calls, and whether they were outgoing or incoming calls. The Tenant did not identify the telephone number in his testimony, although, he implied that these were the Tenants’ repeated calls to the building manager. There was one incoming call on July 30, 2019, and outgoing calls to this number on November 26, 2019, August 6, 2019, February 2, 2020, March 31, 2020, and April 9, 2020. There were eight more calls to and from this number on a second call log, between March 12, 2019 and January 31, 2020.

The Agent said that none of these calls have information about what was discussed. He said:

There’s one text in your evidence of October 29, [2019]. Why after that date you couldn’t send a quick text re the balcony? There’s nothing until the end of March, but it didn’t say that this was an issue.

Even in your letter [submitted by the Landlord]; why don’t you mention the balcony problem, since summer? It doesn’t mention waiting months – you’re just exaggerating the claim now to get as much money, because you told the building manager there was no rush. [R.V.] will testify to that.

The letter dated March 15, 2020, from the Tenants to the building manager, P.G., includes:

...the larger issue is we need our sliding patio door replaced. It does not slide and has a hole. We really want our patio accessible! The landlord temp inspected & said he would put in a letter for replacement. We would be happy to get these all sorted....

The temporary building manager, R.V., testified, as follows:

The door frame was a little off. I put the frame together and pushed the door closed. I asked, have they used the door? It’s hard to use - not sliding properly. I

made sure it was closed. I said it might take time to fix, and he said okay, it's more important to have it closed – not a priority to go outside.

The Tenant said:

You said just to close the door. It still needed parts to close it properly. When you came to repair, they needed pieces to close it properly. [R.V.] had no tools. We smashed the door together. A couple weeks okay, but I wanted to get glass; you left it and didn't follow up. I did call in November and December, but you didn't bother to call anyone. [The Landlord] assumed it was fixed.

R.V. said:

When I left the apartment, the door was closed. He was happy for the moment. I looked into the baseboard, as well. No further action? Wrong. We submitted a request with pictures of the door and window. We addressed it as soon as possible.

The Agent said to R.V.: "In your email you said a tenant told you . . . he was not worried; therefore, why not schedule it in the Spring? Most likely yes."

The Tenant said:

Not true. We waited a couple weeks. The draft still came in, and we wanted it closed properly, so there would be no draft. We don't need the balcony.

The Agent said:

This is the first time I'm hearing of a draft. You're saying these things, but you didn't text or email the Landlord about it.

#2 Order to reduce the rent for repairs, services or facilities agreed upon but not provided → \$1,000.00

The Tenant said:

This is regarding the months the door was not fixed. My girlfriend is disabled and uses a walker, so we wanted the balcony repaired since October 29, [2019] – we made a written request, but they're saying we should do more. It should be from

August 19, so this is a fair amount.

The Agent said:

There's no evidence for this claim that has been ongoing since August. The first time was in October and we attended.

On March 15, we were there in four days for fuses, lights... But due to Covid, the glass company wouldn't come. Given the two-month delay, we feel that \$50.00 to \$100.00 is an appropriate amount. \$1,000.00 is excessive, they're trying to get as much as they can. The evidence does not support this. The phone logs don't say anything but fuses, rent payment, packages to pick up – lots of issues in those logs, but they don't say anything else. A text message on October 29 was all. The letter on March 15 shows what you're looking for, and the Landlord was there within days to fix the issues. The Tenant is exaggerating his claim.

The Tenant said:

The call logs show that I have tried to call the Landlord's manager lots of times. It's obvious that I made calls about this. I tried to call [P.G.] and [R.V.]. I feel we've provided enough evidence.

In their last statements, the Parties said the following:

Tenant:

I think [the Agent] is right re the call logs not being as good as text, but I feel we produced enough evidence. The balcony screen door is in "fair" condition on the CIR, but it's the only thing that was not replaced. They knew there were issues with it.

Agent:

After [R.V.] went there, we were going back in the Spring. The first [written] message from them was on March 15 – we tried to fix it on March 19, but were unable to. There were delays until May, but with Covid, the type of repair . . . We agreed to give the Tenants \$200.00, but the Tenants want more. They are trying to get as much as they can. When they asked for a fuse, plumbing fixtures, light, mailbox - we were there - it doesn't support that the Landlord treats them poorly.

There is a \$200.00 credit on their account to be adjusted per this Decision.

Analysis

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

Before the Parties testified, I advised them of how I would be analyzing the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenants must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenants to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenants did what was reasonable to minimize the damage or loss.

("Test")

#1 Compensation for monetary loss or other money owed → \$150.00

I find that the essence of the Tenants' claim is that the balcony door in their rental unit did not close properly, and that it allowed cold air and bugs into the apartment, which they said required them to purchase bug spray, and which ruined some of their food.

The Landlord's evidence is that the door to the balcony was closed by the temporary building manager, but not repaired in November 2019; however, the Agent understood that the Parties had agreed that it would be fully repaired in the Spring, since the Tenants would not need to use it over the winter months.

I find that the Tenants' evidence is internally inconsistent. On one hand, they said they called for further maintenance in November and December 2019. On the other hand, the Tenant acknowledged in his testimony that they did not raise the issue with the Landlord until serving the Landlord with their submissions for this hearing.

I also have undisputed evidence before me that the Landlord has addressed a variety of other maintenance issues within a few days that the Tenants had over the time period in question. Further, when the Landlord was unable to provide repairs to the Tenant in the

Spring of 2020, due to the state of emergency from Covid, the Landlord deposited a \$200.00 credit into the Tenants' account to make up for the delay that they did not cause.

Based on the Tenants' internally inconsistent evidence, and the Landlord's pattern of reasonable response to maintenance issues, I find that the Tenants have not met their burden of proof in the first two steps of the Test. Further, the Tenant indicated that the amount claimed seemed "fair" in the circumstances; however, the Tenants did not submit any documentary evidence, such as receipts to support this claim. Accordingly, I find that the Tenants did not meet the first three steps in the Test to prove this claim on a balance of probabilities. Given this finding, I further find it is not necessary to consider the fourth step. I dismiss this claim without leave to reapply.

#2 Order to reduce the rent for repairs, services or facilities agreed upon but not provided → \$1,000.00

I find that the Tenants provided other internally inconsistent evidence in trying to prove this claim. In the hearing, the Tenant indicated that the claim was "almost a year old"; however, he also indicated that it dates back to August 2019 or November 2019. I find that this inconsistency decreases the reliability of the Tenants' evidence before me. In addition, the Tenants did not provide any documentary evidence to support the amount they are claiming in this matter.

I find that the Tenants have provided insufficient, reliable evidence to prove that the Landlord was aware of there being a problem until November 2019. Further, as noted above, I find that the Landlord was unaware of there being anything to further repair regarding the balcony door until the Spring of 2020. I find that without the Landlord's awareness of a problem, that the Tenants have not established on a balance of probabilities that the Landlord breached the Act, Regulation or tenancy agreement in this matter.

I find that the Landlord's testimonial and documentary evidence is more internally consistent, and consistent with common sense and ordinary human experience. As such, I find the Landlord's submissions to be more credible and reliable than that of the Tenants. I find the Landlord's evidence of providing the Tenants with regular, timely maintenance, as well as compensation for the Covid delay, supports the finding that the Tenants' claims are without merit. I dismiss the Tenants' claims wholly without leave to reapply.

Conclusion

The Tenants are unsuccessful in their Application, as they did not provide sufficient reliable evidence to support their claims on a balance of probabilities. I dismiss the Tenants' claims wholly, without leave to reapply.

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: July 19, 2020

Residential Tenancy Branch