



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Advent real estate services ltd and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, RR, PSF, OLC**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to reduce rent for services and facilities agreed upon but not provided pursuant to section 65;
- An order that the landlord provide services or facilities agreed upon but not provided pursuant to section 65; and
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents.

As both parties were present service was confirmed. The parties each testified that they were served with the respective materials. Based on the testimonies I find each party duly served with the materials in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Additional Respondent

The landlord's agents submitted that the property owner PR ought to be added as a respondent to this matter. The agents confirmed that they act as agent for both the corporate entity managing the property and the personal property owner. The agents confirmed that both the corporate respondent and the personal property owner have been served with the tenant's application and evidence. The tenant did not oppose adding an additional personal respondent as a party.

Based on the submissions of the parties and in accordance with Residential Tenancy Rule of Procedure 7.13 I amend the style of cause to add the personal respondent and find that they have been sufficiently served with the application and evidence in accordance with section 71 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to reduce the monthly rent?

Should the landlord be ordered to provide services or facilities or be ordered to comply with the Act, regulations or tenancy agreement?

Background and Evidence

This periodic tenancy began in June, 2017. The current monthly rent is \$1,950.00 payable on the first of each month. The rental unit is a two-bedroom, two-bathroom penthouse suite in a strata managed building.

There was a previous hearing under the file number on the first page of this decision dated July 13, 2020 where the previous arbitrator issued an order that the landlord “determine the nature and extent of repairs required to the interior of the rental unit as the result of water damage”, to “begin any required repairs identified as a result of the above noted investigation as soon as possible” and “to complete any repairs as soon as possible, and not later than 30 days after their commencement”.

The parties agree that repairs have commenced in early August, 2020 and the landlord testified that they have been informed the work should be completed within a few weeks.

The parties do not dispute that the rental unit suffered a leak in or about December of 2019 and that water damage resulted. The tenant submits that due to the nature and extent of the damage they have been unable to use one of the bedrooms and one of the bathrooms of the suite. The tenant submits that their teenaged child has been unable to occupy their own room and have been forced to use the living room as a makeshift bedroom. The tenant testified that due to the inability to use the second bedroom and bathroom the living arrangements have been tight and challenging. The tenant submits that their daughter has not been able to entertain guests or enjoy privacy and their activities have been severely curtailed. The tenant suggests that a monetary award

\$6,000.00, the equivalent of \$1,000.00 of rent for each of the six months' the bedroom and bathroom were unusable is appropriate. The tenant also seeks to reduce rent by \$1,000.00 for each month that the repairs remain uncompleted.

The tenant further submits that there were issues with the dishwasher and refrigerator in the rental unit. The tenant suggests that a retroactive rent reduction in the amount of \$1,000.00 for the loss of the use of the refrigerator for five months and \$500.00 for the loss of use of the dishwasher for six months is appropriate. The tenant submitted into evidence correspondence with the landlords reporting the issues with the appliances and the ongoing attempts to have repairs made.

The landlord submits that the issues with the appliances were resolved in a reasonable time frame and any delays were due to the need for inspection, parts to be ordered and repairs to be scheduled. The landlord further submits that the tenant contributed to the delay by failing to provide necessary information in a timely fashion.

Analysis

The tenant seeks compensation for loss in the value of the tenancy due to the ongoing construction. Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

While I find that the ongoing issue with water ingress into the rental unit and the work performed by the landlord has some impact on the tenant, I find that the evidence does not support the full amount of the monetary claim. I find the tenant's suggestion of the amount of the reduction in rent to be out of proportion with the evidence.

As regards the refrigerator and dishwasher I find that the issues with these appliances were addressed in a timely manner in accordance with what is reasonable under the circumstances. Based on the evidence of the parties I find that the issue with the

refrigerator was more in the nature of a minor inconvenience and did not seriously impact its use or the tenant's daily lifestyle. The tenant did not suggest that the refrigerator was unusable or that they were unable to store foodstuffs during the period when they were having issues. Similarly, while I accept that the dishwasher had some issues when functioning, the tenant provided little information regarding the impact this had on their daily routine or how often they would have used the appliance had it not been malfunctioning. I find little evidence that the issues with these two appliances had a significant impact on the tenant.

Based on the foregoing I find that a nominal sum of \$100.00 to be an appropriate award for the loss of use of the fully functioning refrigerator and dishwasher during the tenancy.

The parties agree that the water damage in the rental unit caused a loss in the value of the tenancy. The parties are unable to agree on the appropriate monetary value of the loss.

The parties gave little evidence regarding the area of the rental unit that was affected by the water ingress. The evidence is that a bedroom and bathroom of a two-bedroom two-bathroom rental unit could not be used from February 2020 onwards. The tenant said that the bedroom was normally used by their teenage daughter and that the family have made the living room into a makeshift bedroom for the duration. The tenant provided little testimony on the impact the loss of a bedroom and bathroom had on their ability to enjoy the rental unit. While the tenant alluded to the loss of privacy for their teenage child and the difficulties inherent in sharing a bathroom for an extended period of time, there was little evidence on the impact to the tenant's daily routine. The tenant suggested that the loss of a bedroom and use of the living room as a makeshift bedroom meant they were unable to entertain guests but I note that the period that the bedroom was unusable coincides with the ongoing Covid19 pandemic and it is unlikely that guests would have been invited.

Nevertheless, I find it reasonable to conclude that the reduction of a bedroom and bathroom in a rental unit would have a significant impact on the day-to-day life of a tenant. I further accept that due to the tenant's daughter occupying the living room as a makeshift bedroom the family's ability to enjoy the living room was curtailed as the inevitable result of the water damage.

Under the circumstances I find a monetary award in the amount of \$4,550.00, the equivalent of approximately 33% of the monthly rent for each month since February 2020, to be appropriate.

As the landlord has undertaken the work as required in the order of the Branch of July 13, 2020 and the landlord reports that the work is scheduled to be completed within 30 days of its commencement, I find it unnecessary to issue an order that the landlord provide services or facilities or that they comply. I also find it premature to issue an order for future reduction of rent beyond August 2020.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$4,650.00. The landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: August 10, 2020

Residential Tenancy Branch