



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROMPTON REAL ESTATE SERVICES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

On July 9, 2020, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking a return of the security deposit pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing, with A.C. attending the hearing as counsel for the Tenants. J.W., A.B., and M.N. attended the hearing as agents for the Landlord. All parties in attendance, except A.C., provided a solemn affirmation.

A.C. advised that the Landlord was served the Notice of Hearing and evidence package by courier on July 9, 2020, and J.W. confirmed that this was received. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Tenants’ Notice of Hearing and evidence package. As such, I have accepted the Tenants’ evidence and will consider it when rendering this Decision.

J.W. advised that the Landlord did not submit any evidence for consideration on this file.

A.C. submitted that the Tenants were no longer seeking a return of the security deposit as that matter was addressed in a previous Dispute Resolution proceeding (the relevant file number is noted on the first page of this Decision).

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 15, 2018, that rent was established at \$3,300.00 per month, and that it was due on the first day of each month. The tenancy ended when the Tenants gave up vacant possession of the rental unit on March 31, 2020. A security deposit of \$1,650.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

In A.C.'s written submissions, and as reiterated during the hearing, she indicated that the Tenants chose this rental unit for the unique view that it provided. There was no air conditioning in the rental unit, so the Tenants relied on being able to open their windows for air flow. However, it was discovered that a range hood fan routed kitchen exhaust into the rental unit, not directly outside. In addition, on November 14, 2018, the Tenants discovered that the internal vent system stopped working, which caused a significant amount of noise. The Tenants brought this to the Landlord's attention numerous times; however, there was no remedy provided by the Landlord.

On June 29, 2019, the Tenants were informed of a window replacement project that the strata had planned since 2017. Had the Tenants been informed of this prior to moving in, they would not have signed the tenancy agreement. The construction commenced on July 8, 2019 and ended in September 2019. The Tenants were required to remove their property from the walls and living area, and cover their electronics and furnishings with tarps. On July 8, 2019, scaffolding and plastic tarps were set up, which severely restricted air flow and light transmission in the rental unit, and completely blocked their view. The restricted air flow was exacerbated by the lack of ventilation in the rental unit. Moreover, this renovation was conducted during some of the hottest months of the year.

Due to this renovation, the Tenants were unable to use their living room and second bedroom. In addition, their privacy was impacted as construction workers would be

outside the windows from before 8 AM to sometimes after 6 PM. The noise and dust associated with this renovation were also unreasonable, and more than a temporary discomfort or inconvenience. Furthermore, she noted that window coverings were removed during the window replacement project that were never replaced at the end of the project.

Moreover, she submitted that there were security concerns as contractors left the door to the rental unit propped open “on multiple occasions” or on “at least two occasions.” In addition, she noted that entries were made to the rental unit without the proper written notice on July 12, 15, and 16, 2019. Additionally, the Tenants received less than 24 hours notice for entry on August 22, 2019. Finally, on September 4, 2019, an agent for the Landlord attempted to enter the rental unit without any notice to the Tenants.

She advised that the Tenants are seeking compensation in the amount of **\$14,864.00** for the loss of quiet enjoyment of the rental unit due to these issues. The Tenants are seeking the following compensation:

- 1) July 8, 2019 – September 20, 2019 (\$22.00 X 75 days = **\$1,650.00**)
 - 20% rent reduction of daily rent for construction noise = \$22.00.
- 2) July 8, 2019 – September 20, 2019 (\$22.00 X 75 days = **\$1,650.00**)
 - 20% rent reduction of daily rent for loss of privacy = \$22.00.
- 3) July 8, 2019 – September 20, 2019 (\$22.00 X 75 days = **\$1,650.00**)
 - 20% rent reduction of daily rent for loss of views = \$22.00.
- 4) July 10, 2019 – September 9, 2019 (\$22.00 X 73 days = **\$1,606.00**)
 - 20% rent reduction of daily rent for restricted use of rental unit = \$22.00.
- 5) July 2019 – September 2019 (\$110.00 X 13 days = **\$1,430.00**)
 - 100% rent reduction of daily rent for restricted access of rental unit = \$110.00.

6) November 2018 – March 2020 (\$165.00 X 17 months = **\$2,805.00**)

- 5% rent reduction of monthly rent for loss of vent and hood fan = \$165.00.

7) July 2019 – March 2020 (\$165.00 X 8 months = **\$1,320.00**)

- 5% rent reduction of monthly rent for loss window coverings = \$165.00.

8) June 2019 – March 2020 (\$165.00 X 9 months = **\$1,503.00**)

- 5% rent reduction of monthly rent for water damage in bathroom = \$165.00.

9) July 2019 – September 2019 (\$250.00 X 5 instances = **\$1,250.00**)

- \$250 rent reduction for each entry without proper notice.

Tenant J.L. made submissions during the hearing with respect to the loss of quiet enjoyment that they suffered. He advised that the window project construction work began on July 2, 2019 when the scaffolding was erected. He stated that construction would start at 8 AM every day, that there were always lots of tradespeople around, and that they were blowtorching, hammering, and jackhammering constantly, sometimes until 6 or 8 PM. In addition, over one long weekend, boards were placed over their lower windows, completely obstructing their view.

A.C. referenced the pictures that were submitted as documentary evidence to demonstrate the extent of the scaffolding and tarps that obstructed their view. As well, the proximity of the tradespeople to the rental unit is very clear. She also cited pictures of the Tenants' property that was moved and tarped because of the renovation work, and these illustrated the Tenants' loss of use of two rooms.

She advised that the Tenants worked from home but were unable to for 13 days during this project. As a result, they were required to rent a co-working space. Invoices for three of these rentals were submitted as documentary evidence. Tenant K.S. advised that her workday would entail daily zoom calls with co-workers, and these would be disrupted by the tradespeople constantly walking outside the windows. She would typically have used the spare bedroom as her work office.

Regarding the claim for the internal vent and hood fan issue, J.L. advised that they notified the Landlord of these problems; however, they were advised that the Landlord

had no intention of fixing them. These issues were not significant prior to the window replacement; however, the ventilation problems became much worse when they were unable to open their windows. They cited emails submitted as documentary evidence to support their position that they advised the Landlord of the problems and that the Landlord did not rectify them.

With respect to the Tenants' claims about the window coverings, A.C. submitted that the rental unit came with window coverings, that they were removed for the window replacement project, and that they were never replaced after the project was completed. K.S. advised that two, large windows could not be used because they were completely exposed, but J.L. stated that they never brought up the issue of replacing the window coverings to the Landlord's attention.

Regarding the leak in the bathroom, the Tenants stated that there was a leak that originated from the unit upstairs and they advised the Landlord of this by email on June 23, 2019. The Landlord stopped the leak but never fixed the damage. The Tenants followed up multiple times with the Landlord; however, the Landlord never addressed their concerns and rectified this issue. They stated that the visible damage lowered the value of the rental unit. In addition, the moisture caused swelling in the walls, impeding the door from being easily opened and closed. Moreover, the moisture caused a smell and dampness in the bathroom. A.C. referenced the pictures and emails submitted as documentary evidence to support the Tenants' position on this point.

Finally, A.C. advised that on July 12 and 15, 2019, tradespeople left the door to the rental unit open and unlocked. As well, on July 16, 2019, the Tenants were not notified that anyone would be entering the rental unit and again, the door was propped wide open. This represents a safety concern for the Tenants. On August 23, 2019, the Landlord provided the Tenants with less than 24 hours notice, by email, of a need to enter the rental unit. In addition, on September 4, 2019, an agent for the Landlord attempted to enter the rental unit but the proper written notice for entry was never given to the Tenants. She referenced emails submitted as documentary evidence that demonstrate the Tenants' efforts to inform the Landlord that the *Act* has requirements the Landlord must follow if entry to the rental unit is necessary.

Regarding the first five claims by the Tenants, Landlord J.W. advised that he had recently taken over this file from other co-workers, but the window replacement project was initiated by the strata, not by the Landlord/Owner. The strata hired the company to complete the project so the strata should be held responsible for any losses, not the Landlord/Owner.

Regarding the internal vent and hood fan issue, he was not sure why there was a delay for addressing this issue. He could not locate any requests to the Landlord to have these issues fixed. However, he stated that any repair issues over \$1,000.00 required owner approval.

J.W. advised that he had no submissions regarding the window covering issue.

With respect to the bathroom leak repair, he acknowledged that it should have been repaired by the Landlord.

Finally, regarding the Tenants' complaints of entries to the rental unit, he advised that most of these were due to the actions of tradespeople, not employees of the property management company. He stated that his company did the best they could to coordinate any entries with the Tenants. However, he did acknowledge that the notice of August 23, 2019 did not comply with the *Act*.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 28 of the *Act* outlines the Tenants' right to quiet enjoyment and states that the Tenants are entitled to "reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29, and use of common areas for reasonable and lawful purposes, free from significant interference."

Section 32 of the *Act* requires that the Landlord maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, make it suitable for occupation by the Tenant.

Section 67 of the *Act* allows for an Arbitrator to determine the amount of compensation to be awarded to a party if a party has not complied with the *Act*.

Policy Guideline # 6 outlines the covenant of quiet enjoyment and states the following:

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 landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

With respect to the Tenants' claims for compensation for loss, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenants prove the amount of or value of the damage or loss?
- Did the Tenants act reasonably to minimize that damage or loss?

The first issue I will address pertains to the Tenants' claims for compensation during the window replacement project. For ease, the Tenants' first five items on the table in their written submissions are directly related to the loss suffered due to the window replacement project. As such, these five issues, totalling a claim of \$7,986.00 will be addressed together.

There is no dispute that substantial renovations were undertaken on the property and that the duration of this construction took almost three months to complete. While it is evident that the Landlord's requirements to replace these windows likely fell under Section 32 of the *Act*, the Tenants are still entitled to freedom from unreasonable disturbance.

When reviewing the totality of the evidence, there is no doubt that such an extensive construction project would inherently cause a substantial interference with the ordinary and lawful enjoyment of the premises. Despite the Landlord notifying and updating the Tenants throughout the project, in my mind, given the timeline of the construction project, I do not find that this could reasonably be considered a temporary discomfort or inconvenience. Rather, I find that this situation would more likely than not be considered a daily and ongoing interference, or unreasonable disturbance. Therefore, I accept the Tenants' evidence with respect to the severity and frequency of the disturbances. As well, I agree that this construction project would have affected them negatively by impacting their day-to-day lives as the conditions that they were subjected to go beyond what would be considered reasonable to accept.

When establishing the amount of compensation warranted, given that the Tenants worked from home, a majority of their time was spent in the rental unit. As such, the loss that they suffered was significant as they had little respite from the ongoing disturbances. While it is understandable that some disturbances cannot be helped and are to be expected during such a massive renovation project, I am satisfied that the Tenants endured a substantial loss and a significant reduction in the enjoyment of their rental unit due to the extent of everything associated with this project.

I find it important to note that A.C. has provided a table of the Tenants' calculations of loss requested, and a calculation of daily rent has been determined to be equivalent to \$110.00 per day. However, in this table, their fifth claim for the 13 days of compensation is based on a loss of a full \$110.00 per day. Furthermore, these thirteen days are already included in the Tenants' previous four heads of claim for loss due to construction noise, loss of privacy, loss of views, and restricted use of the living room and second bedroom. In essence, the Tenants are claiming for a full refund for those 13

specific days of rent, and then requesting additional compensation for those same 13 days in the other four heads of claim. In my view, this is essentially quintuple dipping as what they are requesting would amount to more than what they would have paid for these 13 days of rent.

Furthermore, the Tenants' first head of claim pertains to construction noise for a period 75 days from July 8, 2019 to September 20, 2019. Given that there are many weekends in this period, and there is no evidence before me that the tradespeople worked continuously throughout the 75 days, I do not find that the Tenants would have suffered from a loss of construction noise on the weekends. As a result, this claim based on 75 days is not accurate.

Moreover, the Tenants' fourth head of claim for the restricted use of the living room and second bedroom is calculated on 73 days of loss; however, the date range provided from July 10, 2019 to September 9, 2019 totals less than 73 days.

While I am satisfied that the Tenants have substantiated that they suffered a loss of quiet enjoyment because of this window replacement project, as the calculations for this loss are not accurate or reliable, I find it necessary to award an amount that I find to be reasonable in these circumstances. Given the nature of the renovation project, I find it reasonable that a loss of 50% of the rental unit would be commensurate and appropriate during the approximate 75 days that the project lasted. As the Tenants have claimed a loss of \$7,986.00, I grant the Tenants a monetary award in the amount of **\$3,993.00** to satisfy these claims.

Regarding the Tenants' claim for \$2,805.00 for the loss of use of the internal vent and improper hood fan, it was apparent from J.W.'s testimony that another colleague managed the rental unit when the Tenants first brought this to the Landlord's attention. While I understand the Tenants' frustration if the Landlord has not made any necessary repairs after being advised of them in writing, the Tenants could have had this issue rectified by applying for Dispute Resolution and forcing the Landlord to make the necessary repairs. Had this been as significant an issue as the Tenants claim, they could have mitigated this loss by taking the appropriate action. I do not find it reasonable that if this was such a critical issue, that they would simply have lived through it for 17 months and done nothing further about it.

Even though I am satisfied that there were likely some repairs that the Landlord was responsible for fixing, I find that the Tenants' claims are diminished because they neglected to mitigate their loss in this respect. I find it reasonable that three months

would have been an adequate time to allow the Landlord to make the necessary repairs before the Tenants could have applied for Dispute Resolution to force the Landlord to make those repairs. As such, based on the Tenants' calculations of 5% of monthly rent, or \$165.00, I grant the Tenants a monetary award in the amount of **\$495.00** to satisfy this claim.

With respect to the Tenants' claims for \$1,320.00 for the loss of use of window coverings, I find it important to note that the Tenants never even advised the Landlord that there was a problem during the eight months that they are claiming a loss for. As the Landlord was not even aware at any point that the Tenants had an issue with window coverings that needed to be rectified, I decline to award the Tenants any compensation for this issue.

Regarding the Tenants' claims for compensation in the amount of \$1,503.00 for living with a bathroom that was damaged due to a water leak, the consistent and undisputed evidence is that the Tenants advised the Landlord of the problem when it happened, followed up, and nothing was done by the Landlord to rectify it. Furthermore, J.W. acknowledged that this should have been repaired. While it is clear that the damage was not due to the Tenants' negligence, and it was the Landlord's responsibility to fix this damage, I also find it important to note that a component of justifying a monetary claim is mitigation.

Had this been such a significant loss to the Tenants, there were remedies that they could have sought to have this corrected at the time. However, they elected not to do so and were only claiming compensation for the issue over a year after it first occurred. I find it reasonable that three months would have been an adequate time to allow the Landlord to make the necessary repairs before the Tenants could have applied for Dispute Resolution to force the Landlord to make those repairs. As such, based on the Tenants' calculations of 5% of monthly rent, or \$165.00, I grant the Tenants a monetary award in the amount of **\$495.00** to satisfy this claim.

Finally, with respect to the Tenants' claims in the amount of \$1,250.00 for entries into the rental unit without the proper written notice, pursuant to Section 29 of the *Act*, the Landlord is required to give the proper written notice any time the Landlord or an agent of the Landlord needs to enter the rental unit unless: the Tenants give permission, housekeeping is provided for in the tenancy agreement, the Landlord has an Order granting permission, the Tenants have abandoned the rental unit, or an emergency exists. In reviewing the totality of the evidence, I am satisfied that the Landlord or agents for the Landlord did not always provide the proper written notice for entry and

that the Tenants brought this to the Landlord's attention. However, I do not find that the Tenants have corroborated that \$250.00 per instance is commensurate with their loss. I grant the Tenants a monetary award in the amount of **\$250.00** total, which I find to be an amount that would sufficiently and adequately compensate for these breaches.

As the Tenants were partially successful in their claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Loss of quiet enjoyment due to window replacement	\$3,993.00
Loss for lack of internal vent/hood fan repair	\$465.00
Loss for lack of bathroom damage repair	\$465.00
Loss for entries contrary to the <i>Act</i>	\$250.00
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$5,273.00

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$5,273.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: November 14, 2020

Residential Tenancy Branch