



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, MNDCT, LRE, OLC, FFT

Introduction

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

- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$35,000 pursuant to section 67;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties 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 was assisted by her partner ("**JB**").

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Tenancy has ended

The parties agreed that the tenancy ended in February 2021. As such, the tenant stated that he no longer requires orders for the landlord to comply with the Act, to make repairs, or to suspend the landlord's right to enter the rental unit. Accordingly, I dismiss these portions of the tenant's application, without leave to reapply.

Issues to be Decided

Is the tenant entitled to:

- 1) a monetary order of \$35,000;
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a tenancy agreement starting June 27, 2014. Monthly rent was \$922 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$450, which the landlord has returned to the tenant. The rental unit is a suite in a single detached house. During the tenancy, the landlord resided in another suite located in the house.

The tenant claims compensation on two separate bases:

- 1) the failure of the landlord to maintain the rental unit in good condition; and
- 2) the loss of quiet enjoyment of the rental unit due to the actions of the landlord.

I will describe each of these in turn.

1. Maintenance of rental unit

a. Mold

The tenant claims that the rental unit became moldy in 2019, and that he reported these mold issues to Landlord. He testified that Landlord did not remediate these issues in a timely fashion and, as a result, he suffered medical issues including nosebleeds and foot fungus. He did not provide any medical records which show that he had these ailments, or that they were caused by mold in the rental unit. He did submit several photographs showing these maladies, however.

The tenant testified that he reported the mold in the bathroom and in the kitchen under the sink to landlord in March of 2020, but the landlord never attended the rental unit to clean it. The landlord testified that she attended the rental unit in March 2020 and determined that there was no mold and that it was actually dirt the tenant was complaining of.

The tenant submitted photographs of the windows in the rental unit which he says have mold on them. However, he provided no documents (such as an air quality report) which show the level of mold in the air in the rental unit. As such, I cannot say to what extent the mold shown in the photographs constitutes a danger to the tenant's health.

The tenant has provided printouts from various medical websites which speak to the danger that mold *can* pose to individuals health, however these are of little assistance to me as I cannot say what, if any, ailments the tenant has as a result of the mold.

The tenant claimed that mold was growing beneath the kitchen and bathroom floor linoleum. He provided an email from an environmental consultant in which the consultant wrote “the black looks like it could be mold growth from moisture beneath the flooring”. The consultant then provided information as to how they would test to see if this is the case. The tenant did not arrange for this test to be carried out.

b. Condition of Rental Unit

The tenant has also submitted numerous photographs and video of the rental unit which show deficiencies in the condition of the rental unit. These include:

- 1) Paint splatters on carpet and cabinets from when the landlord painted part of the rental unit in August 2020;
- 2) Ineffective exhaust fan;
- 3) Inability for rental unit to stay cool;
- 4) Stains on the linoleum floor allegedly caused by the landlord’s dog;
- 5) Cracks in the foundation and exterior walkway;
- 6) Slopping bathroom floor;
- 7) Water leak from the bathroom ceiling;
- 8) Sagging ceiling;
- 9) Improperly aligned cabinetry; and
- 10) Twisted door frame.

I cannot say what the condition of the rental unit was when the tenancy started. No condition inspection report was submitted into evidence.

The tenant also testified that the furnace has never been cleaned and blows toxins and bacteria into the rental unit. He did not submit any documents supporting this allegation, although he did submit several photos of various items in the rental unit covered with what appears to be dust. These photos were labeled “furnace dirt and dust deposit”. I cannot say if this dust is toxic or contains harmful bacteria.

The landlord testified that the tenant never raised this concern with her during the tenancy and denied that the tenant’s claims were true. The tenant submitted a letter he sent to the landlord dated March 4, 2020 into evidence, in which he references the “failure to address clean air issue in respect to furnace servicing”.

The tenant alleges that the rental unit is structurally unsound. The landlord disagrees with this assessment. She testified that the new owner of the rental unit had a professional inspection done of the rental unit, which did not reveal any structural issues. NO such report was entered into evidence.

The tenant testified that he and the landlord discussed making upgrades to the rental unit in 2018 to deal with some of the issues listed above. He testified that these talks became more serious and concrete in 2019. He stated that it was his understanding that the landlord would address some of the deficiencies in the rental unit, and as a result he decided to stay in the rental unit. However, the landlord put the rental unit up for sale in 2020 and these repairs and upgrades were never done.

The landlord denied making any promises regarding upgrades to the rental unit. She testified that she made repairs to the rental unit in 2018 and 2019 following a flood. She testified that the residential property was over 50 years old, and many of the deficiencies in the structure (cracked foundation and sagging or slopping floors) were to be expected in a building of that age.

2. Loss of Quiet Enjoyment

The tenant testified that the landlord's conduct caused him a loss of quiet enjoyment throughout the tenancy. He testified that the landlord engaged in a wide range of practices to deprive him of quiet enjoyment, including:

- 1) Playing the TV very loud late at night and early in the morning (he submitting records of this made at 2:30 am, 7:00 am, and 12:00 am);
- 2) Allowing her dog to bark loudly throughout the day;
- 3) Walking past, or allowing her guest to walk past, the windows of the rental unit and not "averting their eyes";
- 4) Allowing guests to enter the rental unit while he is not there without notice;
- 5) Allowing the guest repairing his window into the rental unit, during the COVID-19 pandemic, not wearing a mask and exhibiting COVID-like symptoms (there is no evidence to suggest that the tenant contracted COVID-19 as a result of this);
- 6) Leaving an unsolicited gift on his doorstep;
- 7) While inside the rental unit (after having given notice of entry), taking photographs of:
 - a. the interior of the rental unit;
 - b. his driver's license and health card which were on top of a dresser;
 - c. the inside of various drawers; and

8) Spreading rumors about him to the neighbours

In support of these allegations, the tenant submitted photographic, audio, and/or video evidence of:

- 1) the landlord inside the rental unit taking the above-described photographs;
- 2) the guest not wearing a mask;
- 3) a guest and the neighbour walking past the doors and windows of the rental unit and not averting their eyes; and
- 4) loud noises, stomping, TV playing, and dog barking.

The tenant testified that, as a result of these deprivations, he has struggled “personally, financially, mentally, and emotionally.” In a written statement, he stated that in August 2020, he “checked [himself] into the ER Due to severe anxiety and suicidal thoughts as a result of these factors and directly after all personal information and property was illegally photographed. During that time I've had to file police reports, attend sessions with clinical physicians and have been put on antidepressant treatment plans in order to combat these detriments.”

The tenant did not submit any copies of police reports or medical records corroborating this statement.

The landlord denied that she engaged in harassing behavior towards the tenant. She testified that the worker inside the rental unit wiped everything down after he left, so there was no risk of COVID-19 transmission.

The landlord denied taking photographs of documents containing the tenant's personal information while inside the rental unit. She stated that she took pictures of the rental unit generally, as she needed to record what work needed to be done and wanted to document the condition of the rental unit. She testified that in the videos where she is appears to be taking pictures of the contents of the drawers of the tenant's personal documents, she is, rather, holding her phone so she can send a text message.

Upon my review of the video, I find that this is clearly not the case. She does not appear to be typing at all, and the angle she holds the camera at is such that the screen is almost parallel with the floor, and not readily within her eyesight.

Analysis

The tenant did not submit a monetary order worksheet with his claim, so I am not certain as to how he arrived at the amount of his claim (\$35,000).

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The tenant alleges that the landlord breached section 28 and 32 of the Act:

Protection of tenant's right to quiet enjoyment

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;

Landlord and tenant obligations to repair and maintain

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, the tenant must prove it is more likely than not that the landlord breached sections 28 or 32, that he suffered a quantifiable loss as a result of the breach, and that he acted reasonably to minimize his loss.

I also note that Rule 7.4 states:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The tenant submitted over 200 pieces of documentary evidence, only a few of which were referred to at the hearing. Some of these documents are photographs of other documents with the tenant's comments written on them, and even photographs with the landlord's comments written on them and the tenant's comments written in response. The names of each of these files was descriptive as to the document's content, but they were not organized or paginated.

Despite their not being referenced at the hearing, I have endeavored to review all the documentary evidence submitted (including audio and video files), but, without explanation of the significance of some of the evidence, I cannot be certain as to the evidence's significance. I have refrained from speculation about documents I am unsure the significance of and have not referred to them in this decision.

1. Mold

Based on the photographic evidence submitted into evidence, I am not satisfied that mold has grown in the rental unit. I cannot with any certainty say that the photographs of the window that that tenant alleges are covered in mold actually show mold. The windows appear dirty, but I cannot tell what the cause may be. It may be mold, dust, or dirt.

Additionally, I am not satisfied that there is mold growing beneath the linoleum flooring. The only basis for such a proposition on the tenant's evidence is a speculative email from a contractor. No investigation confirming this speculation was prepared.

Furthermore, even if there was mold in the rental unit, the tenant has failed to provide sufficient evidence linking the presence of mold to the ailments he claims to suffer. I accept that the presence of mold *can* cause a person to become ill, but, in the case of the tenant, I have no basis to find that this was the case.

As such, I decline to award any amount of compensation in connection with this portion of his claim.

2. Condition of the rental unit

The tenant has not articulated any quantifiable loss suffered as a result of the following alleged deficiencies:

- 1) Paint splatters on carpet and cabinets from when the landlord painted part of the rental unit in August 2020;
- 2) Ineffective exhaust fan;
- 3) Inability for rental unit to stay cool;
- 4) Stains on the linoleum floor allegedly caused by the landlord's dog;
- 5) Cracks in the foundation and exterior walkway;
- 6) Slopping bathroom floor;
- 7) Sagging ceiling;
- 8) Improperly aligned cabinetry; and
- 9) Twisted door frame.

Additionally, I cannot say what the cause of these deficiencies were or if they predated the tenancy. As such, I cannot say whether their existence is a breach of the tenancy agreement, or if they are, what monetary loss the tenant suffered as a result.

Based on the video evidence submitted, I accept that water leaked from the bathroom ceiling. I am unsure of the cause of the leak, but due to the nature of the leak, it seems improbable that it could have been caused by the tenant.

Water leaking from the ceiling is a manifest breach of section 32 of the Act. I can reasonably infer that such a leak did not exist at the start of the tenancy and that a such a leak represents a failure of the landlord to maintain the rental unit in a state of repair suitable for occupation. Again, I have no evidence as to the loss suffered by the tenant as a result of the breach. However, in the circumstances, I find that nominal damages (per Policy Guideline 16) of \$100 are appropriate.

There is no basis in the evidentiary record to suggest that the furnace is circulating toxins or harmful bacteria in the rental unit. I accept that several of the items in the rental unit are covered in dust, and that this dust is likely circulated by air moved by the furnace. I cannot say if this is an excessive amount of dust as I have no evidence regarding how often these objects were cleaned. I decline to award the tenant any amount in connection with this portion of his claim.

3. Loss of Quiet Enjoyment

Based on the audio and video evidence submitted by the tenant, I accept that the landlord engaged in some conduct which deprived him of his right to quiet enjoyment.

I find that by playing the television at such a volume at 12:00 am and 2:30 am that it could be heard in the rental unit, the landlord acted in such a way as to unreasonably disturb the tenant.

However, the right to quiet enjoyment does not entitle the tenant to absolute silence; it entitles him to freedom from *unreasonable* disturbances. I do not find that the various barking, footfalls, drips, clicks, and similar noises captured in the video and audio recordings amount to unreasonable disturbances. These are noises that are reasonable and to be expected when living in close proximity with others in a building that is over 50 years old.

Similarly, I do not find the landlord's act of sending the tenant an unwanted and unsolicited Christmas present to be an unreasonable disturbance. Indeed, I do not find it to be a disturbance whatsoever, and I find the tenant's characterization of it as one to be an unreasonable one. The tenant is under no obligation to accept such a present, and if it truly was unwanted, nothing prevented him from putting it in the trash with minimal inconvenience to himself.

As I have stated above, I do not accept the landlord's testimony that she did not take photographs of documents containing personal information of the tenant. The taking of such photographs amounts to a breach of the tenant's right to reasonable privacy.

However, I do not find that by taking pictures of the rental unit generally the landlord breached the tenant's right to reasonable privacy. I accept the landlord's evidence that she took photos of it to record its condition and for the purposes of marketing the residential property. This is a valid reason to take photographs of the interior of the

rental unit. The landlord offered no valid explanation as to why she photographed the tenant's personal documents or the inside of the drawers of the rental unit.

I do not find the tenant's allegation that the landlord's failed to avert their eyes while walking past the rental unit to be a breach of the tenant's right to reasonable privacy. There no evidence before me to suggest that the landlord or her guests were peering into the rental unit or walking by the rental unit for the express purpose of looking inside. It is not unreasonable for someone, as they walk past a window, to glance inside. It is unreasonable to expect them to avert their eyes in such situations.

The evidence provided by the tenant is insufficient to support his claim that the landlord or her guests entered the rental unit in his absence without notice or that the landlord spread rumors about him to the neighbours. As such, I decline to find that the landlord breached the Act with respected to these claims.

Similarly, I cannot say if the landlord's worker's failure to wear a mask while inside the rental unit in the tenant's absence amounts to breach of the Act. In any event, there is no proof that the tenant suffered any direct, quantifiable loss as a result of the action. I decline to award any amount for this alleged breach.

The tenant claims that, as a result of the landlord's continual deprivation of his rights under the Act, he struggled "personally, financially, mentally, and emotionally." He also testified that he "checked [himself] into the ER Due to severe anxiety and suicidal thoughts as a result of these factors and directly after all personal information and property was illegally photographed. During that time I've had to file police reports, attend sessions with clinical physicians and have been put on antidepressant treatment plans in order to combat these detriments."

As I have noted above, the tenant has not submitted any documentary evidence corroborating any part of these claims. Such records are in the tenant's power to obtain. It may be that the tenant has checked himself in at an ER as he claims. However, without medical records, I cannot be satisfied that his reasons for doing so, and any treatment plan proscribed to him, was the result of the landlord's actions, or the result of other factors.

Accordingly, I decline to award the tenant any amount on this basis.

As the tenant has not provided a basis upon which I can calculate his loss, I find that the award of nominal damages are appropriate with regards to the TV playing in the middle

of the night and with regards to the landlord photographing his personal documents and in his drawers. I do not find that any other aspect of the landlord's conduct warrants a monetary award in favour of the tenant.

I find a nominal award of \$100 is appropriate compensation for the loud TV playing in the middle of the night.

I find that a nominal award of \$300 is appropriate compensation for the landlord's photographing of the tenant's personal documents and inside the drawers. I award a higher amount of nominal damages for this breach, in light of the fact that that I find this breach to be more severe in its nature.

As the landlord has been largely successful in defending against the tenant's claims, I decline to order that the tenant may recover the filing fee from the landlord.

Conclusion

Pursuant to sections 65 of the Act, I order that the landlord pay the tenant \$500 in nominal damages, as set out above.

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: May 19, 2021

Residential Tenancy Branch