Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DaysGoneBy.org
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR. RP, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Tenant (the Application) under the Residential Tenancy Act (the Act), on December 7, 2020, seeking:

- Repairs to the rental unit;
- A rent reduction for repairs, services or facilities agreed upon but not provided;
- An order for the Landlord to comply with the Act, regulations, or tenancy agreement;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call on March 4, 2021, at 11:00 AM and was attended by the Tenant and an Agent for the corporate Landlord, I.S. (the Agent), who is also a co-owner of the corporation that owns and operates the rental unit. The hearing was subsequently adjourned, and an interim decision was rendered by me on March 4, 2021. A copy of the interim decision was emailed to the parties, as per their request at the hearing, by the Residential Tenancy Branch (the Branch), on March 5, 2021. For the sake of brevity, I will not repeat here, all the matters covered, or orders made in the interim decision. As a result, the interim decision dated March 4, 2021, should be read in conjunction with this decision.

The hearing was reconvened by telephone conference call on April 16, 2021, at 9:30 AM. The Agent I.S. attended the hearing on time and ready to proceed. Although the Tenant was not present at the start of the hearing, as I was satisfied that the Notice of Hearing was sent to the Tenant by the Branch on March 5, 2021, the hearing proceeded as scheduled pursuant to rules 7.1 and 7.3 of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). The Tenant ultimately attended the

hearing at 10:26 A.M., prior to the conclusion of the proceedings, and was provided an opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing, as the Agent had already been provided an opportunity to do before the Tenant's attendance.

Although I have reviewed all evidence and testimony before me that was accepted for my consideration, I refer only to the relevant and determinative facts, evidence, submissions, and issues in this decision.

Preliminary Matters

At the first hearing, the Tenant withdrew their claims for an order for the Landlord to comply with the Act, regulations, or tenancy agreement, and an order for the Landlord to complete repairs, with the Agent's consent, as the tenancy had ended. As a result, the hearing proceeded only on the Tenant's Application seeking monetary compensation for monetary loss or other money owed, a rent reduction for a portion of the tenancy, and recovery of the filing fee.

The Tenant also sought to amend their Application at the first hearing, pursuant to rule 4.2 of the Rules of Procedure, to increase the amount of their monetary claim for a rent reduction from $516.00 to $2,415.09, as they stated that the tenancy continued for several months after the date the Application was filed, and therefore the amount of the rent reduction increased as well. The Tenant argued that this is reasonable, as the Application is clear that their claim for a rent reduction is ongoing, and because the documentary evidence served on the Landlord also makes this clear. The Tenant also sought to increase their monetary claim for monetary loss of other money owed, for additional laundry costs incurred after the filing of the Application. In the alternative, the Tenant requested an adjournment to allow them time to serve an Amendment on the Landlord.

At the hearing the Agent objected, stating that this would be punitive to the Landlord and argued that the Tenant is attempting to intentionally punish them, which they do not believe is fair under the circumstances, as the Tenant's Application has arisen as a result of a difference of opinion regarding whether or not the Landlord acted reasonably in relation to several leaks that occurred in the rental unit and the Tenant's subsequent request to end the tenancy.

In the interim decision dated March 4, 2021, I declined the Tenant's request for an adjournment, and reserved my decision with regards to whether or not I would grant the

Tenant's request to amend the Application pursuant to rule 4.2 of the Rules of Procedure, until I rendered the final decision. For the following reasons, I have granted the Tenant's request to amend their Application to increase the amount of their rent reduction, but have declined their request to increase the amount of their monetary claim with regards to laundry, which at the time of filing was $250.00.

With regards to the rent reduction, I agree with the Tenant that the Application is clear that they are seeking an ongoing rent reduction, as the Tenant specifically states in the Application that although the current amount sought is $516.00, the total amount is yet to be determined, as the loss is ongoing. Rule 4.2 of the Rules of Procedure states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the Application may be amended at the hearing and that if an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

As the Application is clear that the loss to which the rent reduction relates is ongoing, and therefore the final amount sought could not be determined as of the date of the Application, I find that the Tenant's request to amend the Application at the hearing to increase the total amount sought for a rent reduction falls within the scope of rule 4.2 of the Rules of Procedure. As a result, I grant the Tenant's request to amend the Application in this regard, and I amended the Tenant's Application increasing the amount of their monetary claim for a rent reduction from $516.00 to $2,415.09.

I dismiss the Agent's allegations that amending the Application in this regard is punitive to the Landlord, as such an amendment is permitted under rule 4.2 of the Rules of Procedure and the Application made it clear that the Tenant would be seeking an ongoing rent reduction. I also dismiss the Agent's allegation that the Tenant is simply attempting to punish the Landlord regarding a difference of opinion, as there is no basis for such a claim in the documentary or other evidence and testimony before me. The Tenant has made claims that they are entitled to monetary compensation stemming from breaches of the Act on the part of the Landlord, which is their right under the Act, and the purpose of the hearing is to assess these claims. As such, I will assess each of the Tenant's claims on their own merit, based on the documentary evidence, testimony, and submissions before me for consideration, and in accordance with the Act, regulation, case law, and applicable Residential Tenancy Policy Guidelines (the Policy Guidelines).

Issue(s) to be Decided

Is the Tenant entitled to a rent reduction for repairs, services or facilities agreed upon but not provided in the amount of $2,415.09?

Is the Tenant entitled to compensation for monetary loss or other money owed for laundry, supplies, and recovery of costs incurred for a mould inspection?

Is the Tenant entitled to recovery of the $100.00 filing fee?

Background and Evidence

The tenancy agreement states that the fixed term of the tenancy, which commenced on November 15, 2016, ended on November 30, 2017, and that the tenancy continued on a month to month basis thereafter. Rent was set at $1,245.00 at the start of the tenancy and was due on the first day of the month. Term 3 of the addendum to the tenancy agreement (the addendum), states that occupancy of the rental unit is restricted to those listed on the tenancy agreement and that rent will be increased by up to $200.00 per month for each additional occupant approved where more than two persons occupy the rental unit. Although the Tenant stated that they sought to end the tenancy on January 15, 2021, it ultimately did not end until January 31, 2021, as the Landlord did not allow them to give less than one month's written notice to end their tenancy. The Agent agreed that the tenancy ended on January 31, 2021, and that the Tenant was required to give one month's written notice to end the tenancy as required by the Act.

In the Application the Tenant stated that rent at the time the tenancy ended was $1,377.00. At the hearing, neither party disputed that this amount was correct.

The Tenant stated that there were 4 wetting events in the carpeted bedroom of their rental unit between January of 2019 and November of 2020, each progressively worse than the last and usually occurring after rainfall. The Tenant stated that although they reported these events to the Landlord's agents, insufficient action was taken by the Landlord to investigate and remediate damage caused by water ingress, including wet and stained carpeting and drywall and mould.

The Tenant stated that the air quality in their bedroom, the primary location of the wetting events, became such a significant issue for them, their spouse, and their newborn child, that on November 26, 2020, they had to move into their living room and kitchen area, which presented very significant challenges in terms of space in their

small rental unit. The Tenant stated that this also very significantly impacted their use and quiet enjoyment of their rental unit, as they barely had space to move around and were significantly restricted in terms of noise and movement for large portions of the day while their newborn child slept, as they no longer had a separate enclosed bedroom in which the child could sleep.

The Tenant stated that despite their requests for the Landlord to have the rental unit inspected for mould, the Landlord refused to do so, and the Tenant therefore paid for their own mould inspection on December 5, 2020. The Tenant stated that the report, a copy of which was provided for my review and consideration, cost $393.75 and provided the invoice. The Tenant stated that the report shows two types of toxigenic mould in the bedroom at moderate levels, along with a non-toxigenic form of mould, and recommended the removal of the carpet and some drywall, the installation of poly sheeting around the bedroom door for sealing, and the laundering of clothing and soft materials stored in the bedroom.

The Tenant stated that they emailed the report to the Landlord's agent, and requested action, including that they be allowed to move temporarily to a vacant rental unit next door while remediation was completed, but their request was denied, as the Landlord wanted them to move out at their own costs and simply provided them with a list of unsuitable alternate rental listings. The Tenant stated that although the Landlord offered a rent reduction, the amount was not specified and was therefore never agreed to or received. Further to this, the Tenant stated that the Landlord's agent questioned the qualifications of the mould inspector and inferred that they themselves were more qualified than the mould inspector.

The Tenant stated that they gave notice to end their tenancy as a result of the Landlord's inaction with regards to remediation for the damage caused by the wetting event, including the mould. The Tenant stated that Although they gave written notice on December 24, 2020, to end their tenancy effective January 15, 2021, the Landlord did not allow them to end their tenancy early, and that although they moved out on January 5, 2021, the tenancy officially ended on January 31, 2021 in accordance with the Act.

The Tenant sought a 75% rent reduction for loss of use and loss of quiet enjoyment, beginning from November 26, 2020, when they moved their bedroom into the living room, until January 15, 2021, the date they wanted to end their tenancy. They also sought a 100% rent reduction between January 16, 2021 – January 31, 2021, as they stated that the rental unit was not habitable during that time period.

The Tenant sought $393.75 for reimbursement of the mould inspection cost, as they had obtained the report themselves in an attempt to compel the Landlord to complete necessary repairs and maintenance with regards to the mould and wetting events under section 32(1) of the Act, when the Landlord had refused their request to have the rental unit properly inspected for mould. In their Application the Tenant sought $250.00 for laundry; however, at the hearing they sought on $20.00 for laundry costs incurred, which they calculated at $1.00 per large garbage bag. The Tenant stated that they completed the majority of this laundry at their new residence, not a laundromat, and therefore have no verification of the actual costs, but argued that $1.00 per large garbage bag is a very reasonable estimate, and well below the actual costs. The Tenant also sought recovery of $11.73 paid for plastic sheeting and painter's tape so that the bedroom could be sealed off from the rest of the apartment, as recommended in the mould inspection report.

The Tenant submitted copies of email and text communications between them and the Landlord/Landlord's agents in regard to the wetting events, the mould inspection report and invoice, pictures of the rental unit and a receipt for the purchase of plastic sheeting and painter's tape.

The Agent stated that they have been a tradesman for 15 years and a property manager for 35 years and that they, the Landlord, and other agents for the Landlord did the best they could to diagnose the reasons for the wetting events and resolve them. The Agent stated that as water hydrolysis through the floor was suspected, diagnosis and resolution was complicated, and required the testing of several hypothesis. The Agent stated that the investigations were further hampered and complicated by the fact that water ingress only occurred during heavy rain, and therefore could not be easily traced and diagnosed at other times.

The Agent stated that they first suspected overland flooding, as overland flooding had occurred on that site 7 years prior, but this was ruled out through investigation of the area and drains surrounding the rental unit. The Agent stated that next they suspected a change in drainage patterns in the area as a result of major construction in the neighbourhood, as they had seen this in the past, but again this was ruled out after a tour of the neighbourhood revealed no major ongoing construction or excavation in close vicinity to the rental unit, particularly groundwork that would be likely to disrupt natural drainage and waterflow patterns in the area. Next the Agent stated that they suspected the perimeter drain, after spotting a plugged downspout, and that they then had the permitter drain in that area inspected. The Agent stated that they did not

immediately suspect the perimeter drain, as it was replaced or significantly repaired 10 years prior. The Agent stated that although there was some drainage impairment due to root tendrils, which were cleared out, this particular perimeter drain was only one of two drains in the area and should not have caused the wetting events in the rental unit, given it's location, the fact that it was not entirely blocked, and the fact that another drainage route was available. Finally, the Agent stated that they excavated around an exterior portion of the building in which the rental unit is located, and found crushed drainage tiles, which they suspect were crushed by a large stone when erosion washed away the soil that had supported it.

The Agent stated that although the drainage tiles have since been replaced, they are still not positive that the water ingress issue has been resolved, as there has not be another instance of heavy rain since, and the rental unit is currently vacant. The Agent stated that although they could have removed the flooring and installed a drain in the bedroom floor, this would have necessitated vacant possession of the rental unit, as it would have necessitated ripping up and replacing the concrete and the installation of new drains, this was not a suitable response at the time, as the Tenant wanted to stay in the rental unit, and in any event, may not have resolved the issue as they did not in fact know at that time what was causing the water ingress and therefore how to best resolve it.

The Agent stated that although they appreciate the inconvenience suffered by the Tenant as a result of the wetting events, they were working their hardest to diagnose and resolve the issue, and that it was not reasonable to remove and replace the carpet and drywall until the source of the leak had been properly identified and resolved, The Agent also suggested that the Tenant's perception of the events was skewed by the recent change in their family composition and the hardships of being trapped indoors in a small space due to the pandemic with both their spouse and a very young child.

The Agent argued the Landlord acted diligently and appropriately in attempting to resolve the issue and that the Tenant continued to use the rental unit, including portions of the bedroom, throughout the entire tenancy. As a result, the Agent argued that the Tenant should not be entitled to a rent reduction. However, the Agent stated that in the event that I find that a rent reduction is appropriate, I should not grant the amount sought by the Tenant and instead grant a lesser amount, perhaps 20% as the bedroom amounts to approximately 20% of the square footage or the rental unit, or a $129.00 per month rent reduction based on their assessment that market rent in the area is approximately $1.00 per square foot and approximately 129 square feet of the 636 square foot apartment was impacted.

The Tenant disagreed that they had any real use of the bedroom after November 26, 2021, when they began sleeping in the living room, despite storing some clothing, the change table, and a dresser in the bedroom as there was nowhere to move them to in the apartment. The Tenant also denied the Agent's assessment that market rent in the area is $1.00 per square foot, asserting that the Landlord had listed their rental unit for more than $1.00 per foot when they vacated.

The Agent also stated that the mould report industry exploits the "urban legend" that mould is dangerous and causes health issues and that the Landlord should not be responsible for costs incurred by the Tenants as a result of this mistaken belief, such as the mould report, laundry, and the cost of other incidental items such as garbage bags, plastic sheeting, and tape.

Agent pointed to several articles submitted on the Landlord's behalf regarding leaky condo's, invoices for work completed, a partial document titled "Residential Indoor Air Quality", email communications between the parties, and their written submissions in support of the Landlord's position.

Analysis

Section 32 the Act states that a landlord must provide and maintain residential property 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, makes it suitable for occupation by a tenant.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- 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 *[landlord's right to enter rental unit restricted]*;
- use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline #6 states that 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. However, a tenant may be

entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

Policy Guideline #6 also states that 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 Act and that 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.

Finally, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

There was no dispute between the parties that 4 wetting events occurred in the rental unit between January 2019 and November 2020, and that no carpet or drywall in the affected area(s) was removed or replaced by the Landlord during the course of the tenancy. Although I am satisfied that the Landlord made reasonable efforts to ascertain and repair the cause of the wetting events, which I accept were not routine to diagnose, I nevertheless find that the Tenant suffered a significant loss of use which also constitutes a significant loss of quiet enjoyment as a result of the wetting events and their lack of resolutions and repair. I am satisfied on a balance of probabilities that the Landlord’s lack of action with regards to removing the wet carpet and drywall, and/or ensuring that they were properly dried between wetting events to prevent mould growth, resulted in the growth of both toxigenic and non-toxigenic mould in the rental unit, specifically the bedroom of the one bedroom rental unit, to such an extent that a mould problem resulted, which prevented the Tenant and their family from using the bedroom as intended between November 26, 2020 – January 31, 2021.

The Agent argued that the carpet and drywall could not be replaced until the source of the leaks had been located and remediated, and therefore the Landlord should not be responsible for having not replaced it. Although it may not have been prudent to replace the wet carpet and drywall until the cause of the water ingress was diagnosed and resolved, I find that this does not absolve the Landlord of their responsibilities under

section 32 of the Act to provide and maintain residential property 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, makes it suitable for occupation by a tenant. I find that there were options available to the Landlord to remediate the water damage in the rental unit, other than replacing the drywall and carpet, that would have reduced or eliminated the mould issue that ultimately rendered the only bedroom in the rental unit unsuitable for occupation by the Tenant and their family members, including a newborn child, such as properly drying out the carpet and drywall between wetting events and or removing it pending diagnosis and repair of the water ingress issue. As I am not satisfied that the Landlord took such action, I am therefore not satisfied that the Landlord met the obligations incumbent upon them under section 32 of the Act.

Although the Landlord's agent questioned the veracity of the mould report and the mould inspector's qualifications, the report states that the inspection and testing was performed in accordance with generally accepted standards of mould inspection and sampling analysis, incorporating analytical methods recommended by the Canadian Construction Association and Health Canada. Pictures of the carpet staining, thermogenic imaging completed, moisture readings taken, and reports of the types and quantity of mould found as a result of surface sampling were given. Despite the Agent's reservations, I am satisfied that the mould inspection was completed by a qualified inspector and that the report accurately reflects the type and level of mould present in the rental unit. Further to this, there was no dispute between the parties that at least four wetting events had occurred in the rental unit between January 2019 and November 2020, and that the affected carpet, underpadding, and drywall had not been removed or replaced. As a result, and based on common sense and ordinary human experience, I find it reasonable to conclude that mould would likely be present in these areas. As a result, I accept that the mould inspection report is accurate with regards to the type and level of mould present in the rental unit, the location of the mould, and the remediation required.

In the mould report the inspector stated that the removal of the contaminated building materials is required, and recommended the laundering of all clothing and linen and hermitically sealing off the bedroom until remediation and decontamination was complete. As stated above, I am satisfied that the Landlord breached section 32(1) of the Act by failing to take adequate action with regards to the wetting events which lead to the bedroom of the rental unit not being suitable for habitation by the Tenant and their family members. I am also satisfied that the Tenant suffered the following losses as a result, and that they mitigated their losses, as required by section 7 of the Act and

Policy Guidelines #5 and #16, by repeatedly attempting to have the Landlord take sufficient action to meet their obligations under section 32(1) of the Act, before taking action themselves at a reasonably economic rate:

- $393.75 for the mould report;
- $20.00 for laundry; and
- $11.73 for plastic sheeting and painter's tape to seal off the bedroom.

I am also satisfied that the Tenant suffered a significant loss of use which also constitutes a significant loss of quiet enjoyment, when they had to move out of the only bedroom in the rental unit, and into their kitchen and living room space. Although the Agent argued that the Tenant should be granted no rent reduction, or a rent reduction equivalent to only 30% or $129.00 per month, I disagree. With regards to the 20% rent reduction, I find that more than the mere square footage of the rental unit directly impacted needs to be considered, such as the importance of the room affected, which in this case was the only bedroom in the small rental unit, and the impact of the loss of that space on not only all other parts of the rental unit, but the Tenant's use and quiet enjoyment of the rental unit in general. As the Agent's 20% rent reduction on the basis of only square footage does not take these factors into consideration, I find it unreasonable. With regards to the Agent's argument that fair market value for the rental unit is $1.00 per square foot and therefore a $129.00 per month rent reduction might be reasonable, again I disagree. At the hearing the Agent stated that the rental unit was 636 square feet and there was no disagreement that rent at the start of the tenancy was $1,245.00 and $1,377.00 at the time it ended, both of which demonstrate to my satisfaction that fair market value for the rental unit was well in excess of the $1.00 per square foot valuation given by the Agent at the hearing. As a result, I dismiss the Agent's argument that fair market value for the rental unit is $1.00 per square foot as speculative, baseless, and wishful on the part of the Landlord.

Given the importance and significance of a bedroom in general, and the fact that this was the only bedroom in the apartment, coupled with the fact that not only was the bedroom impacted, but their other living space as well, I find that the Tenant is entitled to a 75% rent reduction from November 26, 2020 – January 31, 2021. However, I dismiss the Tenant's claim for a 100% rent reduction between January 15, 2021 – January 31, 2021, as I am not satisfied that the rental unit was uninhabitable during that time, as alleged by the Tenant, as there is no evidence before me that anything changed with regards to the habitability of the rental unit between those dates, other than the Tenant's desire to vacate the rental unit.

As a result, and pursuant to section 7 of the Act, I award the Tenant a $172.12 rent reduction for November 26, 2020 – November 30, 2020, which represents 75% of the rent paid by the Tenant for that period. I also award the Tenant a $1,032.75 rent reduction per month for December 2020 and January 2021, which also represents 75% of the rent paid by the Tenant during those time periods. Further to the above, and pursuant to section 72(1) of the Act, I also award them recovery of the $100.00 filing fee.

Based on the above, and pursuant to section 67 of the Act, I therefore grant the Tenant a Monetary Order in the amount of $2,763.10 and I order the Landlord to pay this amount to the Tenants.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **$2,763.10**. The Landlord is ordered to pay this amount to the tenant and the Tenant is provided with this Order in the above terms. Should the Landlord fail to comply with this Order, this Order may be served on the Landlord by the Tenant and filed in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

Although this decision has been rendered more than 30 days after the close of the proceedings, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that neither the validity of this decision nor the associated order, are affected by the fact that this decision and the associated order were rendered more than 30 days after the close of the proceedings.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: June 23, 2021

Residential Tenancy Branch