Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lamplighter Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNC, MNDCT, OLC, RP, LRE, RR, FFT
For the landlord: OPC

Introduction

The tenant filed an Application for Dispute Resolution (the "tenant's Application") on March 8, 2021 seeking the following:

a. an order cancelling the One Month Notice to End the Tenancy for Cause (the "One-Month Notice") issued by the landlord on February 26, 2021;
b. compensation for monetary loss or other money owed;
c. the landlord's compliance with the legislation and/or the tenancy agreement;
d. repairs to the rental unit where requested of the landlord but not completed;
e. a suspension or set conditions on the landlord's right to enter the rental unit;
f. a reduction in rent for repairs, services of facilities agreed upon but not provided;
g. reimbursement of the tenant's Application filing fee.

The landlord filed an Application for Dispute Resolution (the "landlord's Application") on March 12, 2021. They seek an order of possession for the rental unit, after the served the One-Month Notice on February 26, 2021.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on June 15, 2021.

Preliminary Matter

The tenant attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The tenant presented that they gave copies of their prepared evidence to the landlord in person, approximately 9 or 10 days after completing their Application.

The landlord did not attend the telephone conference call hearing. Because the landlord's Application was joined to this one, I find the landlord was informed of the date and time for this hearing.

The *Residential Tenancy Branch Rules of Procedure* Rule 7.3 provides that if a party fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply.

As the landlord did not attend to present their Application, I dismiss the landlord's Application in its entirety, without leave to reapply.

In the hearing, the tenant provided the background to the situation that led to the landlord issuing the One-Month Notice on February 26, 2021. This involved the landlord arranging for pest control to visit the tenant's unit and provide treatment. After the pest control advised the landlord that the tenant's unit was not prepared for treatment and based on what the landlord noted as the tenant's failure to prepare their own unit, they issued the One-Month Notice.

The tenant also provided that the landlord informed them the One-Month Notice was withdrawn. This was after more recent treatment for pests in April.

Based on the tenant's affirmed testimony, and the landlord not attending the hearing, I cancel the One-Month Notice. The onus is on the landlord to provide sufficient evidence to show they issued the notice on a valid basis. Without this evidence, and the tenant's presentation that they were advised of the One-Month Notice being withdrawn, it is cancelled and of no force and effect. The tenancy shall continue. I therefore dismiss the landlord's Application without leave to reapply. This is in addition to the reason I provided above regarding the landlord's attendance in the hearing.

The tenant also applied for a suspension or setting of conditions on the landlord's right to enter the rental unit. In their Application, they provided that "there have been

rumours that the landlord will be seeking a bailiff to have me removed." On my review of the tenant's submissions and their testimony in the hearing, I find the tenant did not present evidence to substantiate this portion of their Application. I find this piece is tied to their Application to cancel the One-Month Notice, describing their concern about the manner in how the tenancy may end. Given that I have cancelled the One-Month Notice, I dismiss this piece of the tenant's Application as it relates to an end of tenancy. I dismiss this piece without leave to reapply.

Issue(s) to be Decided

a. Is the tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

b. Is the landlord obligated to comply with the legislation and/or the tenancy agreement, as per s. 62 of the *Act*?

c. Is the landlord obligated to make repairs to the rental unit, by the tenant's request, as per s. 32 and 62 of the Act?

d. Is the tenant entitled to a reduction in rent, because of repairs, services or facilities agreed upon but not provided, as per s. 65 of the *Act*?

e. Is the tenant entitled to reimbursement of the Application fling fee, as per s. 72 of the *Act*?

Background and Evidence

The tenant spoke to the basic terms of the tenancy agreement in the hearing. The tenancy started on May 1, 2018 for an initial fixed one-year term thereafter reverting to a month-to-month agreement. As of the time of the subject matter of this hearing, the tenant paid rent of $1,271. The tenant paid a security deposit of $620 at the start of the tenancy.

For approximately 10 years the tenant has had ongoing health issues. These are set out in a comprehensive written statement they provided for this hearing. The issue that affects their mobility – and, ultimately the livability of the rental unit – is their use of forearm crutches and a prosthetic. This makes walking difficult at times, and when at

home they use an office chair to move around on the laminate flooring. They worked from home throughout 2020 when the treatments for pests began in their unit. Treatments for pests require movement of furniture and other items which were difficult.

The tenant's issue with their rental unit started in the summer of 2020. The newer building manager informed the tenant that there would be an inspection, this "because of bugs being identified in other apartment." This revealed bugs in the rental unit living room and bedroom.

The initial first treatment for pests had the tenant take 2 days off from work and not having access to the rental unit for one of those days. In the hearing the tenant described this first pest treatment was in July 2020. After the treatment, they were told that everything was clear.

Again, in October, the tenant heard that there was another incident of pests in the building. In the hearing they described how they made the discovery of pests on their own after close inspection. At this point they purchased a new bed, mattresses and linens because of the infestation. They were unclear if work was performed for this repetition of pests and in this hearing, they could not recall if they informed the landlord of this.

The landlord announced another inspection of the rental unit in February 2021 and there was a significant amount of bugs on their bedding. This is despite the tenant never showing signs of being bitten; however, the assessor showed the tenant directly what the infestation was. This brought the need for another treatment, and the tenant had to make the preparations for that. The pest control professionals informed the tenant that there is a "pre-treatment preparation" that the tenant paid for on their own, at the cost of $125. The tenant was informed by the landlord that the landlord would not pay for this preparation. This involved placing items in bags on the balcony, "with clear instructions to have it laundered . . . before placing back on the bed."

A post-treatment inspection revealed more bugs. The landlord scheduled another treatment date for February 24, and this involved another pre-treatment preparation. This meant another workday missed for the tenant. At some point the landlord determined that the tenant was not making full active preparation for this treatment, and this was the reason for the One-Month Notice on February 26.

The tenant submits they incurred costs and losses for this pest problem over the past year. They provided a list, cross-referencing with dates, as follows:

Date	Description	Cost
10-Oct-20	Bed	195.99
18-Oct-20	Comforter and Encasement	67.18
13-Oct-20	Encasement	26.24
28-Oct-20	Pillows	35.99
18-Oct-20	Pillows	29.39
18-Oct-20	Mattresses	760.48
13-Jul-20	Totes – for storage/moving items in the unit	47.03
09-Jul-20	Totes	75.70
28-Feb-21	Totes	82.87
02-Feb-21	pest control – pre-treatment visit	125.00
Lost Wages	July 2020 x 2, Feb 2021 x 1 = 3x8x28.56	685.44
TOTAL		**2,231.31**

On each of these items, the tenant included receipts showing amounts they paid.

In their evidence the tenant provided copies of notices from the landlord advising of bedbug inspections and treatments. These materials include instructions and guidelines on how to prepare a rental unit for the work to be done. These were both addressed to all building residents and the tenant directly for individually scheduled sessions. These materials are from June 2020 and January-February 2021, which correspond to the two treatment procedures that the tenant describes in their statement.

Date	Description	Cost		
10-Oct-20	Bed	195.99		
18-Oct-20	Comforter and Encasement	67.18		
13-Oct-20	Encasement	26.24		
23-Dec-20	Office Chair	107.51		
28-Oct-20	Pillows	35.99		
18-Oct-20	Pillows	29.39		

30-Nov-20	Rug	46.10		
18-Oct-20	Mattresses	760.48		
13-Jul-20	Totes	47.03		
09-Jul-20	Totes	75.70		
28-Feb-21	Totes	82.87		
02-Feb-21	Abel Pest Control	125.00		
08-Mar-21	Residential Tenancy	100.00		
Lost Wages	July 2020 x 2, Feb 2021 x 1 = 3x8x28.56	685.44		
		2384.92		

Secondly, the tenant also makes a claim for an office chair and a rug. This is related to the state of the flooring in the rental unit which they say is coming up, causing difficulty for their means of motion within the rental unit which is a wheeled office chair. The wheel broke off of the one chair they were using, needing replacement. They also made a replacement of the rug in an effort to further smooth the surface to assist with their own mobility.

They made a request for repairs to the flooring, for either its replacement or repair. They provided a copy of their work order request to the landlord dated February 28, 2021, for which they received no response. They described how the landlord came in with another rug, which was more of a “coarse carpet” that actually impairs navigability. These issues with the floor cause an increased frequency of visits to the podiatrist because they must “properly protect [their] remaining foot” where the lifting portions of the floor cut their own foot when they placed weight on it. Additionally, the forceful motions required have increased their visits to the chiropractor.

For this issue, the tenant makes a formal request by way of this Application for repair to the flooring in the rental unit. They also claim compensation for the items they paid for

because of this issue. On the Application they requested the cost of foot treatments as well. The items for which they provided a dollar amount are:

Date	Description	Cost
23-Dec-20	Office Chair	107.51
30-Nov-20	Rug	46.10

Thirdly, the tenant requests a reduction in rent because of the elevator in the building was out of service from late February through to March as of the date of their Application. This left them unable to do laundry, and having to navigate steep narrow stairs. For this evidence they provided notices from the landlord to all building residents: one shows 3 hours for elevator door service in January; the second shows notice that the elevator will be down for "approximately 6 – 8 weeks" starting on February 17th. At the hearing the tenant provided that the elevator was out-of-service through to the end of March.

For this, the tenant claims $500 in a reduction in rent.

In total, the tenant's for compensation because of the flooring, bed bug issue and out-of-service elevator is $3,038.53.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;

2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

During a tenancy, a landlord and a tenant each have obligations to repair and maintain, as set out in s. 32 which states:

> (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 the tenant.
>
> (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit . . .
>
> (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant . . .

One issue in the rental unit stems from the infestation of bedbugs. The pest control firms hired by the landlord, as well as the tenant, confirmed the presence of these pests. From the evidence I find there was a firm approach to the problem, requiring contribution from each of the landlord, the tenant, and the pest control firms.
I find the landlord complied with s. 32 where they hired a firm to take on the large job of handling the infestation which spanned across several units in the building. This is with due regard to both subsection (1)(a) and (b). The first notice from the landlord in the tenant's evidence is that of June 27, 2020 advising of 9 units in which the problem was identified. This instructed all residents to advise the landlord immediately of any discoveries of pests made.

I find the evidence shows the tenant followed the protocol and allowed for entry into their unit for pest control. This was in summer 2020 for an initial inspection, and then a more intensive treatment process. The tenant was provided a set of "After-Treatment Guidelines" after the initial treatment. In the hearing, the tenant testified they were provided with a lot of paperwork regarding the problem, and what they submitted was only a very small part of that.

In this time period, the tenant shows they purchased two sets of totes. The purpose was for temporary storage of their personal items, though the tenant did not provide directives that stated this was the only option. The tenant also did provide evidence of a series of steps they had to follow in this initial process. The storage of the tenant's

personal items and material is not the responsibility of the landlord. Moreover, the tenant has the responsibility to maintain cleanliness within the unit and this is increased as a priority when there is an infestation. The landlord shall not bear the cost for these items the tenant purchased to deal with their own personal items at this time.

I follow this rationale for the tenant's subsequent purchase of another set of totes in February 2021 which they also claimed.

The tenant submitted they had to take two sick days from work for the purposes of preparation and treatment. In their itemized list, they claimed for 2 days in July 2020. There is one notice from the landlord to show on July 8 they advised the tenant of the second treatment on July 13.

The tenant outlined that because of their other health conditions there is no other option for them to attend to work. The tenant did not provide evidence of the two days in this time period they were out from work, taking sick days when treatment and/or inspection was occurring. Additionally, the tenant did not submit material to establish their wage amount of $28.56 that they provided on their itemized list.

I acknowledge the interruption to the tenant's own work, and this is compounded by their health condition and mobility issue. In line with minimizing their claim here, the tenant has not shown that they were truly unpaid for these two absent workdays. They also have not shown that mobile work for them left no other options available for their completion of work, or some other accommodation the employer may make at that time. From the four points outlined above, I find this loss to the tenant is not the result of any violation of the *Act* or the tenancy agreement by the landlord. The value of the loss is not established and based on the evidence submitted I am not satisfied of the need for the tenant here to take sick days.

I follow this same rationale for the tenant's claimed sick day in February 2021. They have not provided a record of that sick day taken, nor have they fully explained the lack of flexibility by their employer, with this particular date being a Saturday.

A large part of the tenant's total claim is for the replacement of their furniture. I find this does not tie back to any violation of the *Act* or the tenancy agreement by the landlord. My finding is that the landlord complied with s. 32 throughout this process. There is no record that the landlord demanded removal or replacement of the furniture by the tenant or made that a stipulation of the completion of work by the pest control teams.

I find the tenant is not entitled to compensation for personal property that they disposed of because of alleged infestation by bedbugs. I find this was a preventive measure and

a personal decision the tenant made on their own, rather than it being imposed by someone else. For me to grant an award for this I would have to assume the landlord was the source of the bedbug problem, or was otherwise negligent in their s. 32 obligations, which is simply not the case. I find the landlord is not obligated to compensate the tenant for losses they experienced as a result of their own decision to replace furniture items.

On the final piece of the tenant's claim stemming from the bedbug issue, they claim for pre-treatment they paid for in February 2021. I find the evidence shows the tenant needed assistance for their own efforts at preparing the unit for inspection and/or treatment. There is no evidence to show that any other party – other than the tenant – bears the responsibility for preparing the unit for inspection and/or treatment. Granting this award would fundamentally point back to the landlord as being the source of the infestation which is not the case here. I find the evidence shows the landlord paid fully for the cost of treatments in the tenant's unit for a serious problem that infringed on health standards. The tenant has the obligation as per s. 32(2) to maintain reasonable health, cleanliness and sanitary standards throughout the unit. These standards are necessarily increased with a bedbug problem, the origin of which is impossible to determine.

The landlord provided a copy of the tenancy agreement in their evidence submitted as part of their Application. I refer to the complete tenancy agreement they disclosed, in particular clause 46. The provides that the tenant agrees to maintain sufficient insurance, to "cover loss of or damage to the tenant's property from any cause." The tenant here did not present whether they carried extra insurance for these purposes, or whether an insurance claim from them was denied for any reason. There is no liability upon the landlord for the bedbug problem here, and I dismiss each of the tenant's claims here associated with that problem.

The tenant also claims costs for the replacement of their office chair, and a rug. The tenant did not provide evidence of the cost of the rug that they replaced. There is no receipt or invoice showing their purchase for this.

With the chair, I am not satisfied the floor caused the damage in the way the tenant described. Minus pictures that show more accurately how the floor being bent or otherwise warped could inflict this damage, I make no award for this claimed amount, with no evidence of damage to the chair from the flooring.

On the issue of the floor, the tenant presented they have mobility issues. I accept their evidence on this without question. This leads to mobility challenges for them within the rental unit. They presented in detail how the floor causes difficulty for them with its

unevenness. Though the age of the building or structure is not known, I do also observe the condition of s. 32(1)(b), that which provides for a consideration of the "age, character and location of the rental unit." There is no information on the age of the flooring within the unit; however, the tenant's pictures do show some warping and lifting of edges on the flooring therein.

The landlord has the duty to accommodate the needs of the tenant. The tenant would benefit from caregiver assistance or someone from their medical assessment team who could assist with how this flooring presents a mobility challenge to them. The need for substantive repairs may be present; however, the tenant has not provided sufficient evidence for me to make an order for the landlord to make repairs.

While the landlord has the duty to accommodate, this does not entail enhancing the unit. I find there is not enough evidence on this flooring issue that shows the landlord did not comply with s. 32, and there are no actions or neglect by the landlord. The condition of the flooring does not otherwise make the rental unit unsuitable for occupation.

I find the landlord's measures thus far – on which the tenant's evidence is not challenged – with other coarse carpets are further impeding the tenant's mobility. On this point, the tenant is credible.

I order the tenant shall clearly define their issues to the landlord. For this hearing, the tenant did not present what their communication on this flooring issue was to the landlord in the past. Reciprocally, the landlord shall make a consideration of repair to the flooring with due regard to the age of the flooring that is in place.

Regarding the out-of-service elevator, the *Act* s. 27 sets out strict parameters on the termination or restriction of a service or facility. Further, a tenant's right to quiet enjoyment includes freedom from unreasonable interference. The *Residential Policy Guideline 6: Entitled to Quiet Enjoyment* gives a statement of the policy intent of the legislation. This provides:

> A breach of entitled to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations where 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.

In these circumstances regarding the inoperable elevator, I find a possible breach would arise from the landlord being aware of the inoperable elevator, then taking no steps to correct that. I find that is not the case here.

I find there is evidence to show the landlord advised building residents of the length of time the elevator would be inoperable. This reminds the residents: "If you need a hand with anything, please don't hesitate to call us." The tenant did not provide evidence that they called the landlord to advise of their difficulties with the stairs, or their need for assistance with getting items to/from their rental unit without an elevator. The tenant here pleaded that the issue would be prevalent if they were having to vacate; however, that possibility was not yet organised or palpably realistic.

Beyond this, there is no evidence to show the landlord was *not* in the process of servicing the elevator. There is no evidence to show the landlord was not aiding the tenant with the inconvenience this causes.

While there is nothing to show the landlord failed in their duty to ensure repair, on my review I find the tenant's ease of access to their own residential unit was interrupted. This also significantly impairs their ability to complete laundry. I find the tenant suffered a loss of use of an elevator that greatly assists them for more than a short-term amount of time. For this, I award the tenant 25% of their rent for the six-week period they outlined in the hearing. This is $476.63. I authorize the tenant with withhold this amount from one future rent payment.

Because the tenant was moderately successful in their Application, I find they are entitled to half the amount of the Application filing fee. I authorize the tenant to withhold the amount of $50.00 from one future rent payment.

Conclusion

Pursuant to s. 67 of the *Act*, I authorize the tenant to withhold the amounts listed above, totalling $526.63 from one future rent payment.

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

Dated: June 18, 2021

Residential Tenancy Branch