



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding QUAY PACIFIC PROPERTY MANAGEMENT
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFL

Introduction

On November 16, 2020, the Tenants made an Application for a Dispute Resolution Proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenants’ Application was originally set down for a hearing on March 9, 2021 at 1:30 PM but was subsequently adjourned for reasons set forth in the Interim Decision dated March 10, 2021. This Application was then set down for a reconvened hearing on June 11, 2021 at 11:00 AM but was subsequently adjourned for reasons set forth in the Interim Decision dated June 11, 2021. This Application was set down for a final, reconvened hearing on September 28, 2021 at 11:00 AM.

Both Tenants attended the final, reconvened hearing; however, a representative for the Landlord did not attend at any point during the 24-minute teleconference. At the outset of the final, reconvened hearing, I informed the Tenants that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

At the original hearing, Tenant W.O. advised that they served the Landlord their evidence package on or around November 25, 2020, but they did not check to see if the Landlord could view their digital, video evidence pursuant to Rule 3.10.5 of the Rules of Procedure (the “Rules”). E.F. confirmed that the Landlord received this package, but the digital, video evidence could not be viewed. Based on this undisputed testimony, I am satisfied that the Landlord received the Tenants’ evidence package. As such, the Tenants’ documentary evidence will be accepted and considered when rendering this

Decision. However, the Tenants' digital evidence will be excluded and not considered when rendering this Decision.

As well, it should be noted that the Tenants submitted a staggering amount of documentary evidence that did not all comply with the Rules pertaining to organization, labelling, and relevance, and some of this evidence was submitted in a digital format that could not be viewed. As such, clearly not all of this evidence will be able to be considered.

At the original hearing, E.F. advised that the Landlord's evidence was served to the Tenants by registered mail on January 4 and February 2, 2021, and the Tenants confirmed that they received this evidence. Based on this undisputed testimony, I am satisfied that this evidence has been served in accordance with the timeframe requirements of Rule 3.15 of the Rules. As such, I have accepted this evidence and will consider it when rendering 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 monetary 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 January 15, 2019 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on September 30, 2020. Rent was established in the amount of \$2,550.00 per month and was due on the first day of each month. A security deposit of \$1,275.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Tenants advised that they observed a leak in the kitchen near the sink in February 2020 and notified the Landlord of this on February 24, 2020. A plumber was brought in on February 26, 2020 and it was determined that the leak was not a fault of the Tenants. A restoration company was brought in and they were told that the repairs would take up to two days; however, little work was conducted to complete the repairs and the Tenants were left without many amenities in the rental unit as they were removed or rendered useless during the repair process. They were in constant contact with the Landlord about the ongoing lack of repairs and the subsequent loss of quiet enjoyment of the rental unit.

They stated that for almost seven months, they were without a dishwasher, a fully functioning fridge, a downstairs bathroom, or laundry facilities. As well, for this period of time, they were unable to use the family, dining, and living rooms due to displaced items and property being stored in there because of the kitchen repair process. Also, as a result of the repair process, the kitchen floor was reduced to exposed plywood. They estimated that they lost a total of approximately 25% of the use of the rental unit because of this failed repair project. Furthermore, for approximately two weeks, they had no kitchen sink or countertops.

The Tenants are seeking compensation in the following amounts:

• Rent reimbursement X 7 months	\$17,850.00
• Food expenses	\$841.37
• Time at laundromat	\$1,150.50
• Cost for Laundry	\$390.00
• Aggravated damages X 7 months	\$1,176.00
• Total	\$21,407.87

At the hearings that E.F. did attend, she advised that the problem originated with an issue with the construction of the sub-floor when the rental unit was originally built. She stated that once she was advised of the leak, repairs started immediately, and they never stopped working on having these repairs conducted. She submitted that the project was delayed because the Tenants contracted COVID, and that the pandemic also had an effect on how quickly these repairs could be managed. She stated that the restoration project was estimated to take three to five months, but the scope of work increased due to requests by the Tenants for additional work to be done, which was not necessary. The owner of the property paid for this additional work out of her own pocket as it was not covered by insurance. The Tenants were asked if they could move out during the restoration process, but they declined.

Analysis

Upon consideration of the testimony 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 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the Tenants' claims for damages, 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?

In addition, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Tenants' claims for compensation, the undisputed and consistent evidence is that there was a leak in the rental unit that was not due to a result of the Tenants' behaviours, and they informed the Landlord as soon as they became aware of this issue. While the Landlord took steps to commence the required repairs, it appears as if there was an insurance matter that complicated and delayed the progress of this work. Regardless, ultimately, Section 32 of the *Act* requires the Landlord to make necessary repairs to the rental unit when it is not a fault of the Tenants, and I accept the consistent evidence that the Tenants were unnecessarily deprived of a significant portion of the use of the rental unit due to the extended duration of this repair work.

However, in the Tenants' estimation, they advised that they lost approximately 25% of the use of the rental unit, yet they claimed complete reimbursement of seven full months of rent during this affected period of time. In my view, complete reimbursement would mean that the rental unit was entirely unliveable. While I acknowledge that the loss of the noted amenities is a substantial interference with one's daily, ordinary living, given that the Tenants continued to live there throughout the seven months, I find that this demonstrates that the rental unit was not entirely unliveable. As such, I grant the Tenants a monetary award in the amount of **\$4,462.50**, which represents a quarter of the monthly rent for this affected period of time.

Regarding the Tenants' claim for the food expenses, I accept that they were forced to eat out for a short period of time as there was no kitchen sink, and the kitchen was rendered even less functional. As such, I grant the Tenants a monetary award in the amount of **\$841.37** to satisfy this claim.

With respect to the Tenants' claim for \$1,150.50 for their hourly rate charge of having to leave the rental unit to do laundry, I do not find their estimation of loss, as equivalent to a job that pays \$XX per hour, to be a reasonable manner with which to calculate this loss. This claim pertains to the loss of value of this facility that was included as part of the tenancy agreement. I find it reasonable to conclude that an initial loss of \$50.00 for not having laundry facilities for the first month to be reasonable. Furthermore, I find it reasonable that the Tenants should be awarded an additional escalating \$25.00 for each subsequent month of the approximate seven months that the Landlord was aware of the problem but did not rectify it (ie. \$50.00 + \$75.00 + \$100.00...) By this calculation, I grant the Tenants a monetary award in the amount of **\$875.00** for the failure to provide a facility that was included as part of the tenancy.

Regarding the Tenants' claim for the expense of having to pay for the washing and drying of laundry for the entire duration of the affected period of their tenancy, I

acknowledge that receipts would not likely be obtainable for coin laundry machines. However, I accept this amount as a reasonable figure for the out-of-pocket costs of the use of laundry machines for this period of time. As such, I grant the Tenants a monetary award in the amount of **\$390.00** to remedy this issue.

Finally, with respect to the Tenants' claim for \$1,176.00 for aggravated damages, Policy Guideline # 16 outlines that aggravated damages "are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application."

When reviewing this claim, I find it important to note that it is the Landlord's responsibility under the *Act* to provide and maintain a rental unit that complies with the health, housing and safety standards required by law, and must make it suitable for occupation. Based on the totality of the evidence before me, I do not find it acceptable that the Tenants should have been without so many basic amenities, that were included as part of the tenancy agreement, for such an extended period of time. However, the onus is on the party making the Application to establish this claim for intangible loss. Given that the Tenants "just picked a number" that they "were not married to" as a penalty, I do not find that the Tenants have adequately supported their claim for aggravated damages. Nevertheless, I find it reasonable to grant the Tenants a nominal award of \$50.00 per month for the approximate seven months that they were without these basic amenities and facilities. Consequently, I grant the Tenants a monetary award in the amount of **\$350.00** in equivalent relief for this loss.

As the Tenants were partially successful in these 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

Item	Amount
Rent reduction	\$4,462.50
Food expenses	\$841.37
Loss of laundry facilities	\$875.00

Laundry machine expenses	\$390.00
Nominal damages	\$350.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$7,018.87

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$7,018.87** 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: October 29, 2021

Residential Tenancy Branch