



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

On January 12, 2021, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss under the *Act*, Regulation, or tenancy agreement. The Tenants also applied for the return of a security deposit.

The matter was set as a teleconference hearing. The Landlords and the Tenant attended the hearing. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The initial hearing proceeded for 80 minutes and needed to be adjourned to a later date due to needing more time.

At a previous hearing attended by the parties an Arbitrator dealt with the issue of the security deposit. Since the matter was previously heard by an Arbitrator, it cannot be re-heard. The Tenants’ claim for the return of a security deposit is dismissed without leave to reapply.

Issue to be Decided

- Are the Tenants entitled to money owed or compensation for damage or loss?

Background and Evidence

The parties testified that the tenancy began on February 1, 2020, as a one-year fixed term tenancy. The Tenants paid monthly rent of \$1,700.00 to the Landlord by the first day of each month. The tenancy ended on October 14, 2020.

The Tenants are seeking compensation from the Landlord due to a loss of use of part of the rental unit and for a loss of quiet enjoyment of the tenancy.

The Tenants provided a monetary order worksheet providing the following claims:

Rent Reduction	\$3,400.00
Rent Reimbursement	\$1,275.00
Loss of Quiet Enjoyment	\$1,560.00
Repayment plan	\$276.38
Utility Compensation	\$212.14
Security Deposit	\$850.00

At the second hearing, the Tenant A.H. amended their monetary claims as follows:

Loss of Use	\$3,400.00
Loss of Quiet Enjoyment	\$1,560.00
Utility Compensation	\$185.82

Loss of Use of the Rental Unit

The Tenants testified that the rental unit is a three-bedroom suite of approximately 800 square feet. The Tenants testified that they did not have use of two of the bedrooms for an eight-month period and they are seeking to be compensated for a loss of value in the tenancy. The Tenants testified that they could not use a 60 square foot bedroom. The Tenants testified that the bedroom area was unusable because it was damaged by rain /water at the start of the tenancy, on or before January 31, 2020.

The Tenants testified that on February 5, 2020 they asked the Landlord to make repairs to the bedroom and followed up with the Landlord to make the repair. The Tenants

provided photographs showing the interior of the bedroom and interior and exterior of a door. In one photo a small amount of water is observed on the floor near the door.

The Tenants testified that another room of approximately 40 square feet in the rental unit was unusable because it had no source of heat and no electrical outlets.

The Tenants explained that they are seeking \$425.00 each month for the eight-month period from February 10, 2020 to the end of September 2020.

The Tenants provided copies of letters they sent to the Landlord on the following dates:

- February 5, 2020 regarding water damage to the bedroom.
- February 13, 2020 asking to seal off a bedroom.
- February 21, 2020 regarding door locks and the yard.
- March 1, 2020 regarding the damaged floor and to cancel the repairs scheduled for March 2, 2020.
- September 25, 2020 regarding their efforts to have the Landlord deal with repair of the bedroom.

The Tenants testified that the Landlord put a cement block as a barrier outside the door to the room on February 3, 2020.

In reply, the Landlords testified that the Tenants were informed during a showing of the rental unit that there was no heat in one bedroom and that this is noted on the unit inspection form.

The Landlord acknowledged that there was water present in the room in February 2020. The Landlord testified that on February 3, 2020 they gave the Tenant notice that a handyman would come to the unit to determine the cause of water/ damage; however, they submit that the Tenants refused entry. The Landlord stated that everything was made difficult by the Tenants. The Landlord stated that they were not able to repair the unit during the tenancy.

The Landlord provided a copy of a notice of entry dated February 8, 2020 for the purpose of entering the unit to install a portable heater to blow dry the floor on February 12, 2020 before a professional inspection.

The Landlord provided an inspection report from a third party dated February 25, 2020 that indicates that no leakage was observed in the room and all corners and floor and

entrance door was dry. The report indicates there is no possibility of water coming in through the entrance door.

The Landlord stated that there is no issue with water ingress into the room and they suspect it was caused by the Tenants' actions. The Landlord stated that after the tenancy ended the bedroom floor was found to be dry and undamaged, and they did not have to make any repairs to the room.

The Landlord provided a letter signed by the Landlord and by a witness that indicates the Landlord installed a portable fan in the room; however, the Tenant unplugged it after complaining about noise and hydro costs. The Landlord submitted that the Tenants action did not help improve the situation. The Landlord states that Tenants refused to let them dry the floor and filmed and pestered their handyman, making fun of his work, and the handyman refused to return to complete repairs.

The Landlord provided a text message where they informed the Tenants that a handyman will attend the unit to deal with the floor at around 11:00 the next day. The Tenants replied that they are not available that day and asked the Landlord to provide proper written notice of entry.

The Landlords submitted the following timeline regarding the Tenants refusal for repairs:

- Jan 31st, on the night of moving in, tenants reported water flooding in one of room. Refused landlord to put in portable heater to blow dry the floor.
- Feb 2nd, tenants refused landlord to put in portable heater to blow dry the floor.
- Feb 3rd, tenants refused landlord to have handyman to come over to fix the floor even though landlord already notified them 24 hours in advance. Tenants requested written notice from landlord to enter premises.
- Feb 6th, tenants refused landlord to put in portable heater to blow dry the floor.
- Feb 8th, notice to enter premises was given by the landlord for putting in the heater.
- Landlords notified tenants that the professional would come on Feb 25th to investigate the reason of water flooding in the room. Tenant refused.
- Feb 9th and Feb 10th, tenant Aaron acted aggressively toward landlords' visitor Darryl and the landlord.
- Feb 13th night, during the meeting, landlord offered to come over to install the bathroom fan and fix the smoke detectors on Feb 16th. Agreement was made that landlord could come over at 11am to do the work. Feb 15th, tenant posted notice on landlord's door, claimed that they assumed no repairs will be made on Feb 16th, because 'they didn't receive any written notice from landlord.
- Feb 16th, notice to enter premises was given by the landlord, again as per tenant's request.
- Feb 18th, the landlord finally could put in a fan and fixed the smoke detectors in kitchen. Tenant refused to sign to confirm repairs had been done after they were completed.

- Feb 21st, response letters from landlord to tenants' "final request for repair" and consent to change lock.
- Feb 23rd, notice to enter premises given by landlord for going in on Feb 25th to check the reason of water flood with the 3rd party renovation company.
- Mar 1st night, tenants posted letter on landlord's door gave a time limit to the amount of time the repair work should take. They claimed a silicone sealant takes a few days to dry. A quick Google search shows that it typically takes 24 hours only.
- Mar 2nd early morning, the contractor notified landlord they would not come over because they couldn't finish the work due to the limit time which was given by tenant (10:30am-1:30pm). They would charge landlord \$200 if there was any short notice next time. Landlord notified tenant the scheduled repair had to be canceled due to last minute reply and time restriction for work. Since then, repairs have to put on hold due to tenants' aggressive behaviors, continuously trying to make difficulty for landlord to proceed the repairs and taking advantage of the COVID 1 pandemic. Landlords' property is being damaged and the floor underneath the flooded room might be moldy.
- Aug 24th tenants emailed "Repairs and Requests" to landlords. In order to follow up tenants' repairment requests, on Sep 22nd landlords posted "notice to enter premises" on tenants' door, requested to conduct monthly check and damage inspection on Sep 27th.
- Sep 27th, tenants refused landlords to enter. Police was called due to tenants' refusal and aggressive behavior (file no. 20-39062). Police suggested landlords to post another "notice to enter premises" to tenants. Landlords posted another one on door on the same day, requested to enter the premises on Oct 1st.
- Oct 1st, tenants still refused landlords to enter the premises even though proper notice has been issued. Police was called by both landlords and tenants (file no. 20-39605).

The Landlords provided copies of the Notice of Entry documents that were issued to the Tenants for the following dates:

<u>Date of Notice</u>	<u>Date of Entry</u>	<u>Reason</u>
February 8, 2020	February 12, 2020	To provide fan and heater
February 16, 2020	February 18, 2020	To provide a fan
February 23, 2020	February 25, 2020	For bedroom floor inspection
September 22, 2020	September 27, 2020	Follow up on tenants email
September 27, 2020	October 1, 2020	For inspection of unit
October 14, 2020	October 15, 2020	For monthly check

The Landlords also provided a copy of February 27, 2020 letter received from the Tenants related to another notice of entry they received regarding the floor and kitchen sink. The Tenants responded that the work would have to conclude no later than 1:30 pm. The Tenants ask the Landlord to reschedule the repair to the kitchen sink.

The Landlord provided a copy of a warning letter dated October 2, 2020 regarding the Tenants refusal to permit entry to the Landlord on September 27, 2020 and October 1, 2020.

Loss of Quiet Enjoyment

The Tenants are seeking compensation for a loss of quiet enjoyment of the tenancy. The Tenants testified that they were disturbed by the Landlord's daughter regularly playing piano. The Tenants have provided copies of text messages sent between the parties regarding the piano playing and have also provided a detailed ledger showing the dates and times of 37 occasions of piano playing from February 14, 2020 to October 20, 2020.

The Landlords submitted that any time their daughter practiced playing the piano the Tenants would slam their door hard, shaking the building to its core and banging the ceiling, or call/text landlord to restriction the time of practising. The Landlords submitted that their quiet of enjoyment was ruined by the Tenants and their kids were in fear.

Utilities

The Tenant stated they are seeking compensation of \$185.82 for the cost of hydro utilities to heat the rental unit. The Tenant testified that they were responsible under the tenancy agreement to pay 40% of the electricity bill. The Tenant stated that she is seeking 15% of the hydro costs for the one room that could not be used and 10% of the hydro costs for the room with no heat. The Tenant stated there was heat loss due to the one bedroom that had no source of heat.

The Tenant stated that she accepted the term of the tenancy that the one-bedroom room did not have a heat source because she needed to find a place to rent. The Tenant stated that the Landlord said they could negotiate the 40% hydro rate, but this did not happen as afterwards, the Landlord did not want to negotiate.

The Landlord testified that the Tenants were informed about the bedroom not having a heat source prior to the parties signing the tenancy agreement. The Landlord stated that this is noted on the move in inspection form.

Analysis

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

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

The Residential Tenancy Branch Policy Guideline #16 Compensation for Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- *Loss of access to any part of the residential property provided under a tenancy agreement;*
- *Loss of a service or facility provided under a tenancy agreement;*
- *Loss of quiet enjoyment;*
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and*
- *Damage to a person, including both physical and mental*

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

Based on the documentary evidence before me and oral testimony provided by the parties during the hearing, and on a balance of probabilities, I make the following findings:

Loss of Use /Value in the Tenancy

Due to the Covid 19 pandemic, in accordance with Ministerial Order M089 dated March 30, 2020, a Landlords right of entry into a rental unit was suspended unless the entry was necessary to protect the health, safety, or welfare of the landlord, a tenant, an

occupant, a guest or the public. Effective June 24, 2020 the suspension on a landlords entry was lifted and landlords were again permitted to enter a rental unit by providing the standard 24 hours notice in accordance with the Act.

After considering the dates of entry within the copies of Notices provided, I find that the Landlords had the right to issue the notices of entry and enter the rental unit.

I find that the Landlords took reasonable and timely action to deal with the reported water issue by issuing four notices of entry within one month of the start of the tenancy for the purposes of dealing with the bedroom flooring and other repair requests.

I find that the reported issue with water ingress into part of the bedroom appears to be limited to the one occurrence on or before February 1, 2020. There was no other testimony regarding continued water ingress. I find that the Landlord provided a fan and heater to the Tenants. I find there is insufficient evidence from the Tenants to establish that after the flooring was dry, the bedroom was uninhabitable due to the presence of water or water damage. I find that the Tenants have not proven the value of their loss; however, I accept that due to the water ingress the room was unusable for a short period. I award the Tenants a nominal damages award of \$100.00.

With respect to the other bedroom that had no source of heat, I have reviewed the Landlords' documentary evidence and I find that the inspection report dated January 30, 2020 provides that there is no heat source in bedroom #2. I find that the Tenants participated in an inspection of the rental unit and knew that there was no source of heat or electrical outlets within bedroom #2.

I find that the other areas of the rental unit were provided with heat and that the Landlords have not breached the tenancy agreement or Act by failing to provide heat to the rental unit. I find that the Tenants could have heated the room by leaving the door ajar or by running a space heater. I find that the Tenants are not entitled to compensation with regard to the character of bedroom #2.

Loss of Quiet Enjoyment

I accept the Tenants testimony that they were disturbed by the sound of the piano practicing. The issue for me to determine is whether or not the piano noise is an unreasonable disturbance.

I have considered the Tenants evidence that there were 37 occasions of piano practicing over an 8-month period with majority of the practice sessions lasting two hours or less and none finishing later than 8:30 pm. I note that some months the piano practices were limited to a few occasions and other months the practices were approximately twice a week.

I find that it is reasonable for the Landlords to engage in piano playing or practicing. I find that noise coming from piano playing is not unreasonable noise. With respect to duration, I find that the Landlords restricted the piano playing to the evenings a couple days per week and for less than two hours on average.

I find that any disturbance experienced by the Tenants from the piano playing is more of a temporary discomfort or inconvenience. With consideration to the above, I find the Tenant's claim to be compensated for a loss of quiet enjoyment due to piano noise is not reasonable. The Tenants' claim for compensation is dismissed.

Utilities

I find that the tenancy agreement required the Tenants to pay 40% of the utility costs. I find that the Tenants request to recover a portion of utility payments they made to the Landlords due to a lack of heating in one room and due to a lack of use for another room is not successful. I note that if there had been a heater in the small room, it would have run on electricity. It appears to me that there would be little difference to the Tenants' hydro costs if they heated the room by leaving the door ajar or if they ran a space heater to the room.

With respect to renegotiating the percentage of hydro, I find that the Landlord was not obligated to re-negotiate the term and it is more likely than not that the acrimony between the parties that began at the start of tenancy played a role.

The Tenants claim to recover utility costs is dismissed.

Conclusion

The majority of the Tenants' claims for compensation for a loss of value in the tenancy and for loss of quiet enjoyment in the tenancy are not successful and are dismissed.

The Tenants are awarded \$100.00 as a nominal award for a temporary loss of use for a bedroom due to water ingress.

I grant the Tenants a monetary order in the amount of \$100.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

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 13, 2021

Residential Tenancy Branch