



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Antares Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **RR, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenants (“the tenant”) attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions.

Landlord – Attendance and Service

The landlord did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 12 minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The tenant provided affirmed testimony that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on September 3,

2021 to the landlord's address as stated in the tenancy agreement. Under section 90 of the *Act*, the documents are deemed received by the landlord five days later, that is, on September 8, 2021

The tenant submitted a photograph of the mailing envelope and a copy of the mailing receipt as evidence which included the Canada Post Tracking Number.

Pursuant to the tenant's evidence and sections 89 and 90, I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution on September 8, 2021.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The tenant provided uncontradicted testimony as the landlord did not attend although served with notice of the hearing. The tenant explained their family lives in the unit. They requested \$500.00 as rent reduction for a one-month period in which the toilet in the unit overflowed three times.

The tenant submitted a copy of the tenancy agreement and provided the following testimony about the history of the tenancy. The monthly tenancy began on May 1, 2019 and rent is payable on the first of \$1,000.00. No security deposit was provided.

In the tenant's application, the tenant provided the following description of the events which led to this claim:

Our sewer first backed up on July 21st. The plumbers knocked a small hole in the blockage and said it needed to be dug up. It has not been dug up and has backed up at least 3 times since then, which has left us without a functioning toilet or shower/bath during those times, besides having to bleach the bathtub

each time it backs up into it. [The agent RJ] has been hard to get a hold of, and not willing to pay for a hotel when we don't have a functioning bathroom.

At the hearing, the tenant testified as follows. They confirmed the written evidence and submitted copies of supporting texts. The first time the toilet overflowed happened on July 21, 2021 in the evening. The tenant called JR, the agent for the landlord who was named in the agreement as the landlord's contact. The agent did not respond, and the tenant arranged for a plumbing company to come on an urgent basis. The tenant stated the problem was not solved and the toilet overflowed two more times. Each time the toilet overflowed, the tenant called/messed JR. Each time, JR did not respond in a timely manner leaving the tenant to arrange for repairs and clean up.

The tenant expressed frustration with the futile efforts to reach the landlord's agent in the urgent situations.

The tenant testified that some of the overflow liquid contained raw sewage. Each time there was an overflow, the tenant was without a toilet from a 3 - 24 hours. Each time, the tenant cleaned up the mess using their own cleaning supplies.

During one overflow, the tenant submitted a copy of a text to the landlord as follows:

We are unable to flush our toilet, and while I will allow that the bathtub does drain eventually, that does not change the current toilet situation.

We would like a hotel room until our toilet works and a reduction in rent for this month.

The landlord's text in response was to deny the request and to advise, "try plunger".

The tenant believed the issue has now been resolved. They requested one-half month's rent of \$500.00 to compensate them for the loss of quiet enjoyment including inconvenience, time and expenses. They also requested reimbursement of the filing fee of \$100.00.

Analysis

The tenant's claim is akin to a claim for compensation for loss of quiet enjoyment. The Act states that the Director may find a landlord has not complied with the Act and a tenant may deduct an amount from rent. Section 65 states:

Director's orders: breach of Act, regulations or tenancy agreement

65 (1) *Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:*

(a)...

(b) *that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director;*

(c) *that any money paid by a tenant to a landlord must be*

(i) repaid to the tenant,

(ii) deducted from rent, or

(iii) treated as a payment of an obligation of the tenant to the landlord other than rent;

I find the tenant provided forthright and credible testimony supported by documentary evidence. I accept the tenant's claim that the toilet in their unit overflowed three times in a one-month period, the landlord did not respond to their call/message in a timely manner, and the tenant arranged for the repairs to take place. I accept their reliable testimony that the overflow included raw sewage. I accept the tenant cleaned up the bathroom, and they were without a functioning toilet from a few hours to a day on each occasion.

In this case, the tenant claimed their right to quiet enjoyment was negatively affected because of failure of the landlord to provide a reliable toilet for a 4-week period, to respond to emergency calls/messages in a timely manner, to carry out effective repairs within a reasonable timeframe, and to clean the affected area.

Section 67 authorizes the determination of the damage or loss and states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The claimant (the tenant) bears the burden of proof to provide sufficient evidence to establish on a balance of probabilities all the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the Act, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the Act.

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.

Section 22 of the Act deals with the tenant's right to quiet enjoyment. The section states as follows:

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

[emphasis added]

The *Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment* states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is

protected and defines a breach of the entitlement to quiet enjoyment as substantial interference with the ordinary and lawful enjoyment of the premises. The Policy Guideline states that this includes situations in which the landlord has directly caused the interference, as well as situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

The Guideline states in part as follows:

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.

This includes situations in which 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.

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.

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.

...

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 RTA and section 60 of the MHPTA (see Policy Guideline 16).

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.

[emphasis added]

Considering the testimony and evidence, based on the Act, and pursuant to Policy Guideline 6, I find that the tenant has met the burden of proof on a balance of probabilities that the landlord breached section 28 (b) of the Act by failing to act reasonably and expediently in protecting the tenant's right to quiet enjoyment. While the landlord met the obligation to provide a contact for emergency repairs under section 33, the landlord failed in the duty to respond appropriately to the tenant's notification of an emergency.

I accept the tenant's evidence as described earlier that the interference with their quiet enjoyment was substantial during the time the overflows were occurring. I accept their reasonable testimony that they believed the unit to be unsafe and uninhabitable during the overflows and that they were put to considerable work in cleaning up.

I find the landlord's inaction or slow reaction coupled with their failure to respond in a timely manner were a dereliction of the landlord's duty. I find the landlord failed to correct the situation within a suitable timeframe or to compensate the tenant. I find the landlord did not meet their obligations under the Act and accept the tenant's testimony that they are not confident or assured the landlord will respond differently if another emergency occurs.

I find the loss of quiet enjoyment extended for a period of one month as claimed by the tenant. I find the tenant lost certainty about whether the bathroom would be usable.

In consideration of the quantum of damages, I refer again to the Residential Tenancy Policy Guideline # 6 which states:

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.

I find the tenant was reluctantly able to live in the unit during this 1-month period but was significantly deprived of their right to live peacefully. I find that, while the source and extent of the disturbance varied depending on the content of the overflow liquid, the

tenant was denied a reliable functioning bathroom during this period and tolerated unhygienic circumstances.

I have considered the history of this matter, the testimony and evidence, the Act and the Guidelines. I find the tenant has met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment for one month.

I accept the tenant's claim that they paid rent in the total amount of \$1,000.00 in this one-month period. I find it is reasonable that the tenant receive compensation in the amount of 50% of the rent paid which I find is \$500.00.

The tenant is entitled to reimbursement of the filing fee of \$100.00.

In summary, I award the tenant a Monetary Order of \$600.00. I direct that the tenant may deduct this amount from the next month's rent on a one-time basis only.

Conclusion

I grant an award to the tenant in the amount of **\$600.00** which may be deducted from the tenant's next month rent on a one-time basis. No Monetary Order is accordingly issued.

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: December 17, 2021

Residential Tenancy Branch