



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WestBank Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNDCT, OLC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on November 2, 2021 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord comply with the Act;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenants and the Landlord's Agents D.B. and G.C. attended the hearing at the appointed date and time. At the start of the hearing the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find the above mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The Parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlord comply with the Act, pursuant to Section 62 of the *Act*?
2. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?

3. Are the Tenants entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties agreed to the following; the tenancy began on June 1, 2021. Currently, the Tenants are required to pay rent to the Landlord in the amount of \$3,950.00 which is due on the first day of each month. The Tenants paid a security deposit in the amount of \$1,975.00 and a pet damage deposit in the amount of \$1,975.00 both of which are currently being held by the Landlord. The Tenants continue to occupy the rental unit.

The Tenants stated that they have experienced constant issues with debris falling and collecting onto their balcony. The Tenants stated that they find cigarette butts, marijuana cigarettes, pieces of wood, sweaters, and kitchen knives. The Tenants stated that this seems to be a daily occurrence and poses a significant risk to the Tenants and their pets.

The Tenants stated that the rental unit was appealing to them given the large balcony which could be used for barbequing and also a space for their pets to enjoy. The Tenants stated that they have been unable to use the balcony which has reduced the value of their tenancy. The Tenants stated that they had notified the Landlord after each occasion, however, since submitting their Application for dispute resolution, the Tenants have stopped notifying the Landlord of the constant issue.

The Tenants stated that they feel entitled to compensation in the amount of \$1,000.00 for each month as a result of being unable to enjoy the use of their balcony. The Tenants provide pictures of the debris on their balcony in support.

The Landlord's Agents responded by confirming the issue of falling debris onto the Tenants' balcony. The Landlord's Agents stated that they responded to the Tenants' concerns by issuing a notice to all occupants of the rental building regarding the no smoking policy and also balcony etiquette. The Landlord's Agents also stated that they conducted inspections of the rental units above in an attempt to determine which units may be smoking in their units or balcony. The Landlord's Agents stated that they were unable to determine which unit is contributing to the debris being thrown on the Tenants' balcony below.

The Landlord's Agents stated that they have not heard any complaints from the Tenants since November 2021. The Landlord's Agents stated that they compensated the

Tenants a one time \$300.00 rent reduction in November 2021. The Landlord's Agents stated that they were under the impression that the issue of falling debris had been resolved given they had not heard any further complaints from the Tenants after they issued the notices.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

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.

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.

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

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

Section 32(1) of the Act states that 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.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

I accept that the parties agreed that the Tenants have been impacted by continuous debris falling onto their balcony from units located above them. I find that the Tenants continue to have access to their balcony, however, are inconvenienced by having to inspect and clean the balcony before each use to ensure there is no debris which may be harmful to the Tenants and pets.

I accept that the Landlord has taken action in attempt to reduce the likelihood of this issue persisting, however, the issue seems to be ongoing.

With consideration to the submissions and evidence from the Tenants and Landlord's Agents, I find the Tenants' claim for a \$1,000.00 rent reduction for loss of their balcony is not reasonable. The Tenants have not substantiated a loss of \$1,000.00 of the monthly rent. I accept that the Landlord compensated the Tenants \$300.00 for the

month of November 2021. I find this amount to be appropriate and reasonable given the circumstance.

The Tenants stated that they experienced issues with falling debris since the start of their tenancy in June of 2021 and that the issue has not been resolved since. The parties agreed that the Tenants stopped notifying the Landlord of the issue in November 2021, therefore the Landlord was under the impression that the issue had been resolved following the issuance of their notices to other occupants.

I find that the Tenants are entitled to monetary compensation in the amount of \$300.00 to clean their balcony in June, July, August, September, and October 2021 for a total of **\$1,500.00**. I accept that the Tenants were compensated for November 2021. I find that the Tenants are not entitled to compensation beyond November 2021 as they did notify the Landlord that the issue of falling debris was still ongoing, therefore, I find that the Tenants did not mitigate their loss during the subsequent months from November 2021 up until the date of the hearing, March 15, 2022 and are not entitled to compensation during this time.

As the Tenants were partially successful with their Application, I find that they are entitled to the return of the **\$100.00** filing fee.

Pursuant to section 67 of the Act, I grant the Tenants a monetary award of \$1,600.00 which may be deducted from one (1) future rent payment.

Conclusion

The Tenants are permitted to deduct \$1,600.00 from one (1) future rent payment as compensation relating to cleaning debris from their balcony.

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: March 15, 2022

Residential Tenancy Branch