Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNRT, PSF, RR, OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 29, 2021 (the "Application"). The Tenant applied as follows:

- For compensation for monetary loss or other money owed
- To be paid back for the cost of emergency repairs made during the tenancy
- For an order that the Landlord provide services or facilities required by the tenancy agreement or law
- To reduce rent for repairs, services or facilities agreed upon but not provided
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- For reimbursement for the filing fee

The Tenant appeared at the hearing. M.R. appeared at the hearing for the Property Management Company. Legal Counsel appeared at the hearing for Landlord I.C.

The parties agreed the Tenant moved out of the rental unit November 30, 2021. Given this, the Tenant withdrew the requests for an order that the Landlord provide services or facilities required by the tenancy agreement or law and an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.

I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

A.H. was originally named as a tenant in the Application. In their written submissions, Legal Counsel for the Landlord states that A.H. was not a tenant of the rental unit and

was only an occupant. Legal Counsel points to the tenancy agreement in support of this position. The written tenancy agreement in evidence only names the Tenant as a tenant and therefore I have removed A.H. from the Application and style of cause.

An issue arose during the hearing about whether the Property Management Company should be named on the Application. M.R. submitted that the Property Management Company should not be named. Legal Counsel for the Landlord did not take a position on this issue. The Tenant did not disagree with the Property Management Company being removed from the Application and therefore I removed them from the Application which is reflected in the style of cause.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony and submissions of the parties as well as the documentary evidence. I have only referred to the evidence I find relevant in this decision.

I note that M.R. had to leave the hearing at 12:10 p.m. and neither the Tenant nor Legal Counsel for the Landlord took issue with this; therefore, I allowed M.R. to leave the hearing at 12:10 p.m.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?

2. Is the Tenant entitled to be paid back for the cost of emergency repairs made during the tenancy?

3. Is the Tenant entitled to reduce past rent for repairs, services or facilities agreed upon but not provided?

4. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant sought the following compensation:

Item	Description	Amount
1	Loss of use of balcony and noise	$27,000.00
2	To be paid back for the cost of emergency repairs (fridge)	$580.00
3	Reduce rent for loss of use of balcony and noise	$2,500.00
4	Filing fee	$100.00
	TOTAL	**$30,180.00**

I note that the Tenant was limited at the hearing to the basis set out in the Application in relation to the reason for the above amounts sought.

A written tenancy agreement is in evidence. The tenancy started August 27, 2020 and was for a fixed term ending August 31, 2021. The tenancy then became a month-to-month tenancy. Rent was $3,450.00 per month due on the first day of each month. The Tenant paid a $1,725.00 security deposit. The agreement included an addendum.

#1 Loss of use of balcony and noise $27,000.00

The Tenant provided the following testimony and submissions.

The Landlord breached their right to quiet enjoyment in relation to loss of use of the balcony and noise. The listing for the rental unit indicated that it had a southeast corner wrap-around covered balcony. The Landlord knew prior to signing the tenancy agreement that the balcony would not be accessible for half of the tenancy; however, the Landlord did not disclose this to the Tenant.

The Tenant saw notices in the lobby of the building about work on the exterior of the building and raised this issue with the Property Management Company by email. At the time, the Tenant wanted to stay in the rental unit despite the work on the exterior of the building because the Tenant planned to live in the unit for a long time and there would only be a short period during which the balcony was inaccessible. The Tenant had planned to live in the unit for five years and was assured by the Landlord that this would work. The Landlord ended up issuing the Tenant a Two Month Notice which ended the tenancy. The Landlord and Property Management Company could have told the Tenant that the Landlord planned to move back into the rental unit when the Tenant raised the

issue of work on the exterior of the building; however, neither did. The rent was reduced by $150.00 per month due to the work on the exterior of the building.

In May, prior to the balcony being closed off, the Landlord and Property Management Company knew the Landlord intended to move into the rental unit when the work on the exterior of the building was complete but did not notify the Tenant of this. In September, the Tenant received a Two Month Notice from the Landlord. There were numerous opportunities for the Landlord and Property Management Company to tell the Tenant about the impending eviction; however, they did not do so.

Most residents left the building due to the impact on their units from the work on the exterior of the building. Although the Landlord submits that the work on the exterior of the building only caused minor noise, the Tenant has video recordings of the noise for the duration of the work. During the work, it was so loud the Tenant could not hear the TV or radio and could not have a phone conversation. The Tenant's daughter was unable to do their school work. The noise continued for six or seven days a week until 6:30 p.m. The noise began in late July of 2021 and ended in early November of 2021. The blinds in the rental unit had to be closed because there were workers going up and down on lifts and working directly outside the rental unit. The balcony was sealed off and inaccessible from July of 2021 to November 28, 2021. The Tenant's balcony furniture was damaged. The Tenant did not message the Property Management Company or Landlord about the noise being unbearable or intolerable because the Tenant thought the noise would conclude, they would again have access to the balcony and the tenancy would continue.

The Tenant could not point to documentary evidence showing when the noise in the rental unit started or when access to the balcony was closed off. The Tenant relied on a photo of a notice posted in the lobby of the building to show that they did not have access to the balcony for a period. The Tenant could not point to further evidence showing that the noise was above a normal level due to the work on the exterior of the building.

The Tenant advised that they came to the amount of $27,000.00 by adding up their rent, move-in and move-out expenses as well as the cost of furniture which was not of any use once they were evicted from the rental unit. The Tenant acknowledged they could use the rental unit, other than the balcony, while the exterior work was occurring. The Tenant testified that they could not stay at the rental unit the entire time because the noise from the work on the exterior of the building was intolerable. The Tenant testified that their daughter stayed at a hotel for 18 days; however, the Tenant could not point to

documentary evidence to support this. The Tenant acknowledged they did not tell the Landlord they could not stay at the rental unit. The Tenant testified that they spent July and August in a vacation home they own due to the issues with the rental unit.

In relation to the Two Month Notice, the Tenant took issue with the Landlord not telling them earlier about the Landlord's plan to move into the rental unit. The Tenant acknowledged they did not dispute the Two Month Notice and that they moved out pursuant to the Two Month Notice.

Legal Counsel provided the following submissions. Neither the Landlord nor the Property Management Company breached the *Act*. The Tenant's complaint is really about being evicted. The Two Month Notice was issued properly and the Tenant did not dispute it. There was no breach in relation to the Two Month Notice. Even if a breach is found, the Tenant has not provided evidence to quantify the damages stated. The Tenant has failed to meet their onus to prove they are entitled to the compensation sought. As well, as shown in the May 13, 2021 email, the Tenant continued the tenancy on a month-to-month basis and negotiated a rent reduction such that the Tenant has already been compensated for the issues raised. The Tenant negotiated the rent reduction knowing there would be three months of work during which the balcony would be closed off. The Tenant could have ended the tenancy if there was an issue with the rental unit.

#2 To be paid back for the cost of emergency repairs $580.00

The Tenant sought to be paid back for the cost of emergency repairs in relation to the fridge in the rental unit. The Tenant testified as follows. They let the Property Management Company know about issues with the fridge and these were not dealt with properly. A repair person came to look at the fridge; however, it was not repaired for another four months. They sent the Property Management Company repeated emails about the fridge issue. They could not keep items in their fridge because the items would freeze. Items in the freezer would not stay frozen. They had to eat out because they could not keep groceries in the fridge or freezer. Four months without a fridge is not acceptable and it was the Landlord's responsibility to ensure the fridge was working.

Legal Counsel made the following submissions. The Landlord does not deny that there was a problem with the fridge. There is ample evidence submitted showing the Property Management Company following up about the fridge and not getting anywhere with the repair company. There were supply chain issues that caused delays in relation to the fridge. If there is any blame, it is on the repair company not the Property

Management Company. The Landlord did not breach the *Act*. The Tenant has not met their onus to prove the losses associated with the fridge issue. There is no evidence about food expenses in the materials.

In reply, the Tenant submitted that the onus was on the Landlord to find another repair company or bring another fridge to the rental unit.

#3 Reduce rent for loss of use of balcony and noise $2,500.00

The Tenant advised that the basis for this claim is the same as the basis for compensation as set out above.

Legal Counsel provided the following submissions. There was already a negotiation between the parties for a rent reduction and there should be no further reduction. The issue was worked out between the parties to the Tenant's apparent satisfaction at the time.

In reply, the Tenant testified that the $150.00 rent reduction "negotiation" was an offer by the Landlord and the Tenant believed they could get through summer and then the work would be done.

Both parties provided written submissions and documentary evidence which will be referred to below as necessary.

Analysis

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

#1 Loss of use of balcony and noise $27,000.00
#3 Reduce rent for loss of use of balcony and noise $2,500.00

Section 7 of the *Act* states:

> 7 (1) If a landlord…does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord…must compensate the [tenant] for damage or loss that results.
>
> (2) A…tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 28 of the *Act* states:

> 28 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.

RTB Policy Guideline 6 addresses the right to quiet enjoyment and states:

B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

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 landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Compensation for Damage or Loss

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.**
>
> 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.
>
> (emphasis added)

Section 65(1)(f) of the *Act* states:

> 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:
>
> (f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement…

The Tenant seeks compensation for loss of use of the balcony and noise from work on the exterior of the building. The Landlord submits that the work on the exterior of the building which "may" have affected the Tenant occurred between August and November of 2021. I accept that the work which may have affected the Tenant started in August of 2021 based on the notice in evidence about the work dated July 28, 2021. However, I also acknowledge the Tenant's email dated July 31, 2021 about finding debris on their balcony furniture which may have required cleaning. I find the length of time over which work on the exterior of the building occurred was substantial.

Based on the emails provided, I accept that rent was reduced on June 10, 2021 to $3,300.00 for July of 2021 and August of 2021. I find based on the emails provided that the rent was reduced in response to the Tenant's concerns about the work being done on the exterior of the building which were outlined in the May 13, 2021 email. I find based on the June 01, 2021 emails between the parties that the Landlord offered the rent reduction and the Tenant accepted it as "wonderful news" without indicating any disagreement or issue with the amount. I find the Tenant has been compensated already for loss of use of the balcony and noise, both of which were referenced in the Tenant's email dated May 13, 2021.

I find the issue before me is whether the Tenant is entitled to additional compensation over and above what has already been provided in the rent reduction for July and August of 2021.

I am not satisfied based on the evidence provided that the Tenant has met their onus to prove they are entitled to additional compensation or an additional rent reduction. The parties disagree about the extent of the disruption to the Tenant due to loss of use of the balcony and noise. The Tenant has not provided compelling evidence to prove that the loss of use of the balcony and noise issues resulted in substantial interference, frequent and ongoing interference or unreasonable disturbances which warrant additional compensation.

The only documentary evidence submitted by the Tenant to support their position about loss of use of the balcony and noise are three undated photos of the rental unit blinds closed with shadows of workers on the other side, the May 13, 2021 email from the Tenant about their concerns with the work on the exterior of the building and an email dated September 07, 2021 from the Tenant stating that they had no use of the balcony for the summer without notice.

I find the concerns outlined in the May 13, 2021 email, which included no use of the balcony for the summer, were addressed by the rent reduction offered and accepted in the June 01, 2021 emails.

I find the three undated photos of the rental unit blinds closed with shadows of workers on the other side of very little use in determining how substantial the interference was, whether the interference was frequent and ongoing and whether there were unreasonable disturbances which warrant additional compensation.

The Tenant has not submitted further evidence to demonstrate the severity of the interference such as videos, audio recordings, notes of disturbances taken over a period of time, dated photos showing the state of the balcony at the relevant times, dated photos showing how often workers were outside the rental unit window, witness statements, further written complaints to the Landlord at the relevant times, documentary evidence showing the Tenant or occupants had to stay elsewhere or correspondence from the Tenant notifying the Landlord they had to stay elsewhere. I find the lack of further evidence to support the Tenant's testimony and written submissions means I am unable to find that the Tenant is entitled to additional compensation or an additional rent reduction over and above what was already agreed to for July and August of 2021.

These claims are dismissed without leave to re-apply.

#2 To be paid back for the cost of emergency repairs $580.00

Section 33 of the *Act* addresses emergency repairs and states:

> 33 (1) In this section, "emergency repairs" means repairs that are
>
> (a) urgent,
>
> (b) necessary for the health or safety of anyone or for the preservation or use of residential property, **and**
>
> (c) **made for the purpose of repairing**
>
> **(i) major leaks in pipes or the roof,**
>
> **(ii) damaged or blocked water or sewer pipes or plumbing fixtures,**
>
> **(iii) the primary heating system,**
>
> **(iv) damaged or defective locks that give access to a rental unit,**
>
> **(v) the electrical systems, or**
>
> **(vi) in prescribed circumstances, a rental unit or residential property.**
>
> (emphasis added)

Further, section 33(5) of the *Act* states:

> (5) A landlord must **reimburse** a tenant **for amounts paid** for emergency repairs if the tenant
>
> (a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(emphasis added)

The Tenant made submissions about the fridge issue in relation to this claim. In their written submissions, Legal Counsel for the Landlord points out that the Tenant's description of the request to be paid back for the cost of emergency repairs "does not appear to relate to any emergency repairs". I do not accept that the fridge issues as described by the Tenant amount to emergency repairs because the issues do not relate to any of the items listed in section 33(1)(c) of the *Act*. Further, the Tenant did not point to any amounts they paid for repair or replacement of the fridge which is the purpose of a request "**to be paid back** for the cost of emergency repairs **that I made** during the tenancy" as is clear from section 33(5) of the *Act*.

In the circumstances, I am not satisfied based on the evidence provided that the Tenant is entitled to be paid back for the cost of emergency repairs made during the tenancy and this claim is dismissed without leave to re-apply.

Filing fee

Given the Tenant has not been successful in the Application, the Tenant is not entitled to reimbursement for the $100.00 filing fee.

Conclusion

The Application is dismissed without leave to re-apply.

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

Dated: March 07, 2022

Residential Tenancy Branch