



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Harron Investments Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, OLC, MNDCT, MNRT, ERP

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67;
- a monetary order for the cost of emergency repairs, pursuant to sections 33 and 67; and
- an order for emergency repairs, pursuant to section 33.

Both parties attended the hearing. The landlord was represented by property managers IS (the landlord) and MC. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Preliminary Issue – Update of addresses

At the outset of the hearing the tenant corrected the tenancy and tenant's addresses.

Pursuant to section 64(3)(a) of the Act, I have amended the tenant's application.

Preliminary Issue – monetary application

At the outset of the hearing the tenant affirmed she is seeking compensation in the total amount of \$804.54:

1. an order to reduce the rent for repairs (\$212.00)
2. a monetary order for compensation for losses due to cupboards doors and bathroom repairs (\$400.00), telephone repairs (\$168.00) and the cost of registered mail cost (\$24.54)

The landlord stated she understands the tenant is seeking compensation in the total amount of \$804.54.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order for the landlord to comply with the Act, a monetary order for the cost of emergency repairs and an order for emergency repairs.

Issues to be Decided

Is the tenant entitled to:

- an order to reduce the rent for repairs?
- a monetary order for loss?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started in April 2005. Monthly rent is \$962.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$335.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The tenant is seeking a rent reduction in the total amount of \$212.00 and a monetary compensation for loss in the amount of \$400.00 because she could not safely prepare her meals and use the bathroom.

The tenant emailed the landlord on November 01, 2021:

Attention: manager or property manager

I am an elderly lady residing in the building since 2005. I experienced water damage in my bathroom above the bathtub approximately 8-9 months ago. I've requested ceiling to be repaired and was told to drain it myself. Nothing has been done.

This is totally unacceptable and needs to be addressed by November 30th 2021 at the latest. I've attached a picture. My refrigerator is also leaking and needs to be fixed or replaced. These conditions are causing me great amounts of stress and I have an already pre existing heart condition. My son is very upset about this and has drafted this letter on my behalf.

Please attend to this. Call ahead of time to resolve this at the number listed below.

The tenant testified the landlord cut the cupboards to install the new refrigerator on November 08, 2021 and fragments fell from the cupboards doors from November 08, 2021 to December 10, 2021 (the 'cupboards repair period'). The tenant said she could not safely prepare her meals because of the fragments falling over the microwave, the stove and the refrigerator. The tenant was still able to cook during the cupboards repair period, but she was afraid that fragments would fall on her food while she was cooking. The tenant asked the landlord 3 or 4 times to repair the cupboards doors during the cupboards repair period.

The landlord affirmed that he cut the cupboards only above the refrigerator. The landlord attended the rental unit a couple of times during the cupboards repair period and did not notice fragments falling from the cupboards doors.

Landlord MC stated she believes the cupboard doors were cut only above the refrigerator.

The tenant testified the bathroom ceiling leaked above the bathtub since March 2021 and she asked the landlord to repair it on November 01, 2021. The tenant asked her neighbour to remove the handrail from the bathtub on November 22, 2021 to help the landlord to repair the ceiling. The tenant could not use the bathtub from November 22 to December 10, 2021 (the 'bathroom repair period') because the handrail was removed. The bathroom was repaired on December 10, 2021. The rental unit only has one bathroom and the tenant could not shower during the bathroom repair period.

Both parties agreed the landlord did not ask the tenant to remove the bathtub handrail.

The landlord said the entire bathroom was always completely functional.

The tenant is seeking compensation in the amount of \$168.00 for the telephone wiring and jack replacement. The tenant affirmed on January 06, 2022 the telephone line stopped working and she paid \$168.00 for the telephone company to replace the telephone wiring and jack. The tenant submitted into evidence the invoice from the telephone company: "Symptoms: no dial tone from the main jack in the living room. Possible causes: short from old jack cable attached to it. Fixes: replaced the jack. Additional details: \$150.00 diagnostic fee charged. Taxes: \$18.00. Total \$168.00."

The tenant submitted into evidence an email dated January 12, 2022:

Tenant: On January 6, 2022, my telephone and Lifeline went dead. I called [landlord] from my neighbour's phone at about 5:00pm and informed her of the problem. It was agreed that I call Telus, which resulted in the paid invoice (attached below). Please inform me whether you wish to reimburse me by cheque or reduce February's rent by \$168.00. Also attached to this email is the technician's card who serviced my unit.

Landlord: I am very confused about this email We don't deliver cable and land line as service from the building. Every tenant is dealing with cable companies by themselves. Also, no damage been done from out side to result land line to stop working. [...] to call Telus directly as we are not dealing with it and is not under our responsibility. She didn't advise the tenant to pay for service, as is not in our knowledge. Looks like you have to deal with Telus, not us. We will not cover this bill.

The landlord stated she is not responsible for the telephone service and the repair is related to the telephone service hired by the tenant.

The tenant is claiming compensation in the amount of \$24.54 for the cost of registered mail to serve the application.

The tenant submitted a monetary order worksheet.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 65(1) of the Act states:

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:

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

(i) repaid to the tenant,

(ii) deducted from rent,

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. 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.

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 the case is on the person making the claim.

Cupboards repair period

Residential Tenancy Branch Policy Guideline 6 states that a temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to 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.

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)

I find the testimony offered by the landlord about the cupboards door repair was more credible than the testimony offered by the tenant. I find the landlord cut the cupboards doors only above the refrigerator. I accept the tenant's undisputed testimony that she was able to cook during the cupboards repair period.

Based on the landlord's more credible testimony, I find the tenant failed to prove, on a balance of probabilities, that the landlord failed to comply with the Act, the regulation or the tenancy agreement. I find the tenant suffered a temporary inconvenience during the cupboards repair period.

I dismiss the tenant's claim for compensation for the cupboards repair period.

Bathroom repair period

I accept the undisputed testimony that the landlord did not ask the tenant to remove the bathtub handrail.

Based on the testimony offered by both parties, I find the tenant failed to prove, on a balance of probabilities, that the landlord failed to comply with the Act, the regulation or the tenancy agreement.

I dismiss the tenant's claim for compensation for the bathroom repair period.

Telephone wiring and jack replacement

Residential Tenancy Branch Policy Guideline 1 states that:

- 1. Where provided under the tenancy agreement, the cost of repairing telephones, jacks and wiring, are the responsibility of the landlord.**
- 2. If the tenant wants to install extra jacks or change jacks, he or she must get written permission from the landlord. If the landlord allows the installation, the tenant must pay for it, unless otherwise agreed.** The tenant must leave the changes / additions at the end of the tenancy, unless there is an agreement to the contrary, in which case the tenant must repair the damaged wall etc.
3. The tenant is responsible for problems with his or her own telephone and cord and any wiring and/or jacks provided by him or her.

(emphasis added)

Based on the tenancy agreement, the January 12, 2022 email and the landlord's convincing testimony, I find the landlord did not agree to pay for the telephone wiring and jack replacement.

I find the tenant failed to prove, on a balance of probabilities, that the landlord failed to comply with the Act, the regulation or the tenancy agreement.

I dismiss the tenant's claim for compensation for the telephone wiring and jack replacement.

Registered mail cost

The registered mail cost is a litigation cost not recoverable under the Act.

Thus, I dismiss the tenant's claims for compensation for the costs of registered mail.

Conclusion

I dismiss the tenant's claim without leave to reapply.

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 29, 2022

Residential Tenancy Branch