Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT RR FFT

Introduction

This hearing, reconvened from an earlier hearing on November 19, 2021, dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act"*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was assisted by an advocate. The landlord JO (the "landlord") primarily spoke on behalf of the two co-landlords.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

This matter is reconvened from an earlier hearing on November 19, 2021 before a different arbitrator with a written Interim Decision dated November 30, 2021. This decision should be read in conjunction with that Interim Decision.

During the hearing the parties requested that this matter be combined with the landlord's application seeking authorization to retain the security deposit for this tenancy pursuant to section 38, and recovery of their filing fee pursuant to section 72 which was scheduled for a hearing on June 3, 2022. Both parties confirmed that they had been

duly served with all materials for that hearing and were prepared to proceed today. In accordance with the authority granted me pursuant to Residential Tenancy Rule of Procedure 2.10, I join the landlord's application to have it heard together at this hearing.

Issue(s) to be Decided

Is the tenant entitled to a retroactive reduction in rent as claimed?
Is the tenant entitled to a monetary award as claimed?
Are the landlords entitled to retain the security deposit for this tenancy?
Is either party entitled to recover the filing fee from the other?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in July 2018. The monthly rent was $800.00 payable on the last day of each month. A security deposit of $400.00 was collected at the start of the tenancy and is still held by the landlords. The rental unit is a suite on the second floor of a two-story multi-unit building. The parties agree that a new occupant began residing in the suite directly below the tenant in the spring of 2019. The neighbor is the adult child of the landlords.

The tenant submits that since the neighbor began residing in the rental building, they have experienced major disruptions, harassment and conflict. The tenant says that the neighbor causes excessive noise in their unit which is audible in the rental unit and is disruptive. The tenant describes the noise as banging on the walls and ceiling, playing music loudly, using the television at maximum volume and various sounds of stomping, dropping objects, and moving items about. The tenant testified that they have made multiple requests to both the landlord and their neighbor to curtail the noise but the situation did not improve. The tenant says the landlord failed to take action to stop the noise and disturbance by the neighbor throughout the tenancy. The parties gave evidence that police have been called by both parties on several occasions.

The tenant submitted into documentary evidence copies of correspondence sent to the landlord, their notes of incidents and timeline of events, and correspondence with local police and victim services in support of their claim.

The tenant testified that the conflict with their downstairs neighbor intensified over time with hostile verbal interactions, intentional banging on the walls and ceiling, vandalism to the rental unit and the tenant's vehicle and physical altercations.

The tenant withdrew the portion of their monetary claim pertaining to damage to their vehicle but continued to testify that they believe their car was vandalized by the landlord or their neighbor who placed a nail in the tire and poured oil onto the vehicle.

The tenant says the landlord did not take adequate actions to address the behaviour of the neighbor and instead have made hollow promises to end the neighbor's tenancy. The tenant submits that the landlord contributed to the ongoing harassment by allowing the neighbor's behaviour to continue unabated, issuing invalid notices of rent increase, arranging for work on the rental property without notice to the tenant and issuing baseless warning letters to the tenant.

The tenant claims that as a result of the landlord's failure to provide quiet enjoyment of the rental unit they have suffered a significant loss in the value of the tenancy, been unable to enjoy the rental unit and suffered psychological damage requiring time off from work. The tenant seeks a monetary award for the loss of wages, loss of quiet enjoyment and compensation for the landlord failing to provide soundproofing in the rental building.

The landlord disputes the tenant's claim in its entirety. The landlord submits that they are aware there is some conflict between the tenant and the neighbor and have made some reasonable attempts to address the ongoing complaints including issuing verbal and written warnings to both parties when appropriate, providing information to police and calling police to intercede between the tenant and neighbor when they felt it was necessary. The landlord testified that due to the Covid-19 state of emergency they did not have the option to issue any notice to end tenancy during much of the period when the tenant made complaints about the neighbor. The landlord testified that, in any event, they feel the tenant's multiple complaints and requests are baseless, unreasonable and without merit.

The landlord says that the rental building is a multi-unit building constructed in 1994 and provides reasonable protection from sounds of neighboring units. The landlord submits that they have had little noise complaints from previous occupants or from the occupants of other units in the building. The landlord disputes that there have been

incidents of physical assault on the tenant or vandalism and break-ins as the tenant alleges.

The parties agree that the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated August 10, 2021 with an effective date of November 1, 2021. The tenant gave the landlord a notice to end tenancy on September 28, 2021 with an effective date of September 29, 2021. The parties preformed a move-out inspection of the rental unit on September 29, 2021 and prepared a condition inspection report. The parties were unable to agree on the assessment of the state of the rental unit and the tenant did not agree to any deductions from their deposit.

The tenant and their witness testified that they felt the landlord's conduct during the move-out inspection to be methodical and intentional. The tenant believes the landlord at some point prior to the scheduled inspection, entered the rental unit and had searched for minor deficiencies which they subsequently pointed out to the tenant during the inspection and noted on the condition inspection report.

A copy of the inspection report was submitted into evidence. The report notes several deficiencies throughout the rental unit. The landlord also submitted some photographs of the rental suite and invoices and receipts for cleaning, replacement of fixtures, carpet cleaning and other work.

Both the tenant and their witness gave evidence that they believe the rental unit was in adequate condition with no basis for any deductions from the security deposit. The tenant disagrees with the issues noted on the condition inspection report and the landlord's photographic evidence saying that these are minor, negligible deficiencies or simply the expected wear and tear from a tenancy in an older building.

The tenant did not provide a forwarding address on the condition inspection report and first provided their address for service in a letter dated October 14, 2021. The landlord filed their application for dispute resolution with the Branch on that same date. The parties agree that a copy of the condition inspection report was contained in the landlord's evidentiary package which the tenant confirmed receiving in the earlier hearing of November 19, 2021 and recorded in the Interim Decision of November 30, 2021.

The tenant submits that they were informed by the landlords at the start of the tenancy that the carpets of the rental unit are old and they would not be required to have them

cleaned at the end of the tenancy as the landlords intended to have them replaced. The tenant's witness was present at the time of moving in and testified that they witnessed the parties making this agreement.

The landlords dispute that there was ever such an agreement allowing the tenant to go without cleaning the carpets. The landlords seek a monetary award of $486.95 for the cost of carpet cleaning, cleaning, work and replacement of items in the rental unit. The landlord testified that they are waiving their claim for any amount beyond the security deposit for this tenancy of $400.00. The landlord submitted invoices in support of their claim. The invoice for carpet cleaing is $250.00.

Analysis

Residential Tenancy Rule of Procedure 6.6 provides that the onus of proof is on the applicant on a balance of probabilities.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This section, read in conjunction with section 65, also allows me to issue a retroactive reduction in the value of the tenancy.

Section 28 of the *Residential Tenancy Act* speaks to a tenant's right to quiet enjoyment, and provides as follows:

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.

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

> 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 a 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 covenant of 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.

Based on the totality of the evidence I am not satisfied, on a balance of probabilities, that there is the basis for a monetary award in the tenant's favour. While it is clear that the tenant has numerous complaints about the other occupants of the rental building and the relationship with the landlord has deteriorated, I am not satisfied that there has been a breach on the part of the landlord giving rise to the basis for a monetary award.

The onus lies with the applicant to demonstrate on a balance the basis for their claim. In the present circumstance the tenant's central submissions are that there has been excessive noise, harassment and disturbance caused by their neighbor which the landlord has failed to curb and to which the landlord has contributed.

I find little evidentiary basis to support the tenant's claim that there has been a breach of quiet enjoyment due to the noise and actions of their downstairs neighbor. I find the tenant's submissions to consist of subjective complaints, conjecture about the motivations of the landlord and neighbor, and the tenant's notes of various grievances which includes the noise and disturbance attributed to the downstairs neighbor as well as issues which appear to be unrelated such as their phone needing replacement batteries, and their mother being bitten by a dog.

While I accept the evidence of the parties that there have been some incidents of conflict, I find insufficient evidence that these were not isolated instances of heated exchange between the parties rather than ongoing, substantial interference. I find much of the submissions of the tenant and their accusations to strain credulity. The tenant suggests that there is a concentrated, willful campaign of harassment on the part of their neighbor, supported and contributed to by the landlords. The tenant gave testimony about their belief that someone has trespassed into the rental unit as well as complaints about vandalism and theft. The tenant withdrew the portion of their monetary claim seeking compensation for damage to their vehicle and testified that they have no proof of the culprit but said they believe the damage was intentionally caused by their neighbor.

The tenant made reference to threats by the neighbor, incidents of physical assault and criminal charges but provided little details of the incidents and no independent documentary evidence to demonstrate such an event occurred.

I find that a litany of complaints that are disputed by the landlord, much of which is not supported through witnesses or independent documentary evidence to be insufficient to demonstrate that there has been a breach of the right to quiet enjoyment as the tenant claims.

I place minimal probative value on the multiple calls made by both parties to the RCMP. It is open for anyone to call the police and make complaints and I find that calls are of little value in determining the veracity of the underlying complaints.

Viewed in its entirety I am not satisfied that there has been a breach of the tenant's right to quiet enjoyment on the part of the landlord, either directly through interference with the tenant or indirectly by failing to take reasonable actions under the circumstance. I find the tenant's complaints to have insufficient evidentiary support. Accordingly, I dismiss this portion of the tenant's application.

Similarly, I am not satisfied, on a balance of probabilities, that there has been a reduction in the value of the tenancy at any point such that the tenant is entitled to a monetary award for a retroactive reduction of rent. I find insufficient evidence for much of the tenant's submissions about the noise levels in the rental building. The tenant's accusations and notes are insufficient to meet their evidentiary burden. While the parties made some reference to work done on the exterior of the building in 2021 they provided little detail on the scope of work or what impact it had on the tenancy.

I find insufficient evidence that there has been a reduction in the value of this tenancy at any point. Consequently, I dismiss this portion of the application.

The parties agree that the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use dated August 10, 2021 with an effective date of November 1, 2021. The tenant gave written notice to end the tenancy on September 28, 2021 by email correspondence and vacated the rental unit on September 29, 2021.

Section 50(1)(a) provides that a tenant who has received a 2 Month Notice pursuant to section 49 may end the tenancy earlier than the effective date of the notice by giving the landlord at least 10 days' written notice.

Section 53 provides that if a landlord or tenant gives notice to end a tenancy effective on a date that is earlier than the earliest date permitted, the effective date is automatically changed to the earliest date the complies.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The tenant submits that they were "forced to vacate the unit early on 28 September, 2021, due to health and safety reasons with respect to ongoing harassment from [the neighbors and landlords]". I find the tenant is effectively submitting that the landlords were in breach of a material term of the tenancy giving rise to the tenant's right to end the tenancy with one day notice.

I find insufficient evidence to show that the landlord failed to comply with a material term of the tenancy agreement allowing the tenant to end the fixed term tenancy on a date earlier than that specified under the tenancy agreement pursuant to section 45 of the Act. While I accept that the tenant was unhappy with the tenancy, and felt the landlord was in breach of their duty to provide quiet enjoyment of the rental unit, I find the tenant's complaint letters, notes and testimony to be insufficient to meet their evidentiary burden.

Based on the totality of the evidence I do not find that the landlords failed to comply with the tenancy agreement allowing the tenant to end the tenancy pursuant to section 45(3).

I find that the tenant gave written notice to end the tenancy on September 28, 2021 with an effective date of September 29, 2021. I therefore find, pursuant to section 50(1)(a) and 53 of the *Act*, the effective date of the tenant's notice is automatically changed to October 8, 2021, 10 days after the notice was given.

Section 51(1) provides that a tenant who receives a 2 Month Notice is entitled to receive from the landlord an amount that is the equivalent of one month's rent.

I accept the evidence of the parties that the tenant has not been given an amount equivalent to one month's rent. I also accept the evidence of the parties that the tenant did not pay any rent on October 1, 2021.

Accordingly, I find the tenant is entitled to a monetary award in the amount of $593.55, representing the equivalent of one month's rent after the corrected effective date of the tenant's notice of October 8, 2021. ($800 – {[$800/31] x 8 days}=$593.55)

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the present case the parties agree that the tenant gave notice to end the tenancy on September 28, 2021 and vacated the rental unit on September 29, 2021. The tenant first provided a forwarding address in writing by a letter dated October 14, 2021. The landlord filed their application for authorization to retain the security deposit on October 14, 2021.

I find that the landlord was within the timelines provided under the *Act* to file an application for authorization to retain the security deposit.

The tenant testified that the landlord failed to provide them a copy of the condition inspection report when it was completed on September 29, 2021.

Section 35(4) of the Act provides that a landlord must provide a copy of a condition inspection report in accordance with the Regulations.

Regulation 18(1)(b) states that a landlord must give the tenant a signed copy of the inspection report within 15 days of the latter of the date the report is completed, or the tenant's provision of a forwarding address in writing.

The parties agreed that a copy of the condition inspection report was contained in the landlord's evidentiary materials that was confirmed to have been received by the tenant. While the parties did not give testimony at the reconvened hearing regarding the date the landlord's evidence was served, the documentary evidence contains a valid Canada post tracking receipt showing materials were mailed on October 20, 2021 by the landlords.

Based on the evidence I find the tenant is deemed served with the evidence package including the condition inspection report on October 25, 2021, five days after mailing in accordance with sections 88 and 90 of the *Act*, and therefore the landlord served the tenant with the inspection report within 15 days of October 14, 2021 as required under section 35(4).

Regulation 21 provides that a condition inspection report completed in accordance with the legislation is evidence of the condition of the rental property unless there is a preponderance of evidence to the contrary.

The tenant submits that the condition inspection report is fraudulent as the landlord appeared to know what areas of the rental unit to inspect and did so in a deliberate manner. The tenant's witness echoes the observation in their written statement where they write "It just seemed to me that her inspection was more methodical than random".

I find the objection of the tenant to the manner in which the landlord conducted the inspection to have little merit. I find that the landlord's methodical and efficient inspection of specific areas of the rental unit rather than aimlessly and randomly wandering about the property to simply be evidence of professionalism. While I accept that the parties disagree on the assessment of the condition of the suite I find insufficient evidence that the inspection was not conducted in a fair and reasonable manner.

I am satisfied that the condition inspection report is accurate evidence of the state of repair and condition of the rental unit on the date of the inspection. In addition to the report the landlord submitted some photographs showing areas of the rental unit and I find the images are consistent with the contents of the report. I find the testimony and written submission of the tenant and their witness disputing the inspection report and stating that the rental unit was in “satisfactory and presentable condition” to be insufficient to rebut the report.

I accept the landlord’s evidence that the rental unit required cleaning and work to restore to its pre-tenancy condition.

The landlord has submitted some invoices and receipts in support of their monetary claim. Among the items claimed is the cost of carpet cleaning. The tenant disputes that the rental unit required any work and submits that there was a verbal agreement between the parties that the tenant was not required to clean the carpets of the rental unit as they were to be replaced.

The tenant’s witness provided a written statement saying they were present at the start of the tenancy and witnessed the tenant and landlord agreeing that carpet cleaning was unnecessary as they “were going to be removed and replaced eventually”.

The inspection report notes the condition of the carpets at the start of the tenancy as “Fair”, a rating that falls between Good and Poor. The parties agree that the carpets were not new at the time this tenancy commenced. The landlord was unable to provide a date when the carpet was initially installed but estimated it had been there for a “few years”.

Policy Guideline 40 provides the expected useful life of elements of a tenancy and states that carpets have a useful life of 10 years.

Under the circumstance I find the submission of the tenant to be compelling. Given the condition of the carpets noted on the move-in report and their age at the start of the tenancy I find it likely that the parties agreed that there would be little value in having the carpets cleaned at the end of the tenancy. With the estimated age of the carpets, it is likely very near, if not already past, its expected useful lifespan.

I find that there is insufficient evidence to show that the carpet cleaning was necessitated by the tenant's actions that went beyond the expected wear and tear. I find that the landlord has not shown that they have suffered a loss due to the tenant's actions. It is reasonable to expect that carpets that have already been noted as merely Fair condition at the start of the tenancy would not be upgraded to Good condition during a tenancy and would require cleaning or replacement. I find that this is a cost of operating a business as a landlord and not a loss that arises due to the tenant's actions.

I find that carpet cleaning is not attributable to the tenant and consequently dismiss this portion of the landlord's monetary calculations.

I accept the balance of the landlord's claim for the cost of cleaning, work and supplies supported by the invoices and receipts submitted into documentary evidence totalling, $236.95. The landlord is authorized to retain that amount from the tenant's security deposit for this tenancy. The balance of $163.05 is returnable to the tenant.

As the landlords were primarily successful in their application, they are entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain $100.00 of the tenant's security deposit in full satisfaction of the monetary award issued in the landlords' favour

Conclusion

I issue a monetary order in the tenant's favour in the amount of $656.60 on the following terms:

Item	**Amount**
Section 51 equivalent of 1 Month Rent less dates of tenancy	$593.55
Return of balance of Security Deposit	$63.05
TOTAL	**$656.60**

The landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 28, 2022

Residential Tenancy Branch