



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1770 Barclay St. Holdings Limited
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **RP, MNDCT, OLC**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

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 corporate landlord was represented by its agent (the "landlord"). The tenant was assisted by an advocate.

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.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the parties agreed that repairs have been concluded and the tenant withdrew the portion of their claim seeking an order for the landlord to perform repairs and comply with the *Act*, regulations or tenancy agreement.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

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. The current monthly rent for this periodic tenancy is \$1,405.00 payable on the first of each month. The rental unit is a suit in a multi-unit rental building. There was an incident of leaks in the water system in the rental unit in October, 2021 which was repaired and resolved by late December, 2021. The nature of the issue was water entering the rental suite through the floorboards. There was an additional incident of leakage from a kitchen pipe on January 13, 2022 which was resolved shortly thereafter.

The parties disagree on when the leak was first detected. The landlord testifying that they first attended on October 11, 2021 and the tenant saying the incident occurred a week later on October 16, 2021. Regardless of the date of the first incident the parties agree that the landlord arranged for third party plumbing services to attend and make repairs to the rental suite which were completed shortly before Christmas of 2021.

The tenant was required to vacate the rental unit for 13 days in December, 2021 while more extensive repairs were conducted. The landlord has issued the tenant a rent abatement in the amount of \$580.00 for the time they were unable to occupy the suite.

The tenant submits that the ongoing issues and the presence of workers during this time caused a significant reduction in the value of their tenancy. The tenant says that their daily routines were affected, they were unable to relax in their home and the intrusion was noticeable and disruptive. The tenant submits that they felt the interactions with the landlord's agents made them feel that they were the cause of the damage to the rental unit and felt the interactions were off putting. The tenant further says that the repair work conducted by the landlord's agents required considerable use of electricity for power tools and there was a significant increase in the amount of their utility bills for those months. The tenant suggests a monetary award of \$1,088.35 to be reasonable for the reduction in the value of this tenancy during the work.

The landlord submits that work was conducted in a professional manner in accordance with industry standards in a reasonable amount of time. The landlord submits that any delays in completing the repairs is attributable to the age and character of the building and performing work in a manner that was the least disruptive to the tenant or other occupants of the building.

Analysis

The tenant seeks compensation for loss in the value of the tenancy due to the plumbing issues and the work done to rectify the deficiencies. Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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 provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

Section 28 of the *Act* provides that a landlord is responsible for providing the tenant with quiet enjoyment of the rental premises. The issue is further expanded in Policy Guideline 6 which provides as follows:

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.

In the present circumstances, I find that the preponderance of evidence demonstrates that the landlord acted in a reasonable manner, taking prudent steps to address the issues identified with the plumbing and water ingress. I find that the landlord took action in a reasonable timeframe and hired professional agents to address the issues in a

manner consistent with industry standards. I find little evidence to support the tenant's submission that the landlord's agents were unprofessional or acted in an unreasonable manner. Based on the evidence before me I find that the landlord acted reasonably under the circumstances and there is no breach of the Act, regulations or tenancy agreement to give rise to a monetary award for loss of quiet enjoyment.

Based on the totality of the evidence including the written submissions of the parties, video recordings and testimony at the hearing I do find that there has been some impact on the value of the tenancy due to the plumbing issues and the work performed to address the deficiencies.

I find that the effect of the disruption to be minor in nature with the tenant able to continue residing in the rental unit for most of the period. While the tenant made some adjustments to their daily routine while work was being conducted inside the suite I find insufficient evidence that there was significant changes to the tenant's standard of living. I find the tenant's characterization of the disruption as I accept the evidence of the parties that the tenant was able to continue residing in the rental unit for all but 13 days.

I find the tenant's submission that they were in a state of "constant turmoil and chaos" to be hyperbolic and not sufficiently supported in the documentary evidence. While the presence of leaks, workers or equipment may be noticeable I find little evidence that the resulting disruption was anything more than minor inconveniences to the tenant.

I find insufficient evidence to causally link the tenant's medical condition to the deficiency or the manner in which work was conducted. I further find little evidence to support the tenant's submission that the interactions with the landlord's agents was unprofessional or demeaning.

Taken in its entirety, I find that there was some disruption to the tenant and a corresponding loss in the value of the tenancy from October to December when there was ongoing work. I find the incident of January 13, 2022 to be a minor follow up to the work performed and did not cause a significant disruption. I further accept the evidence of both parties that the work required use of electrical power which resulted in higher energy consumption and bills during the months of October to December. The parties agree that the amount of the utilities during this time period is \$77.14.

Based on the foregoing, and noting that the tenant has already received monetary compensation for the period that they were unable to inhabit the rental unit, I find that a monetary award in the amount of \$300.00, the equivalent of approximately 5.5% of the monthly rent of \$1,405.00 for the 3 months of October, November and December and the agreed upon utility charges of \$77.14, to be appropriate.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$300.00. As this tenancy is continuing, I allow the tenant to satisfy this monetary award by making a one-time deduction of \$300.00 from their next scheduled rent payment to the landlord.

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: April 21, 2022

Residential Tenancy Branch