



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, DRI, OLC, LRE, RP, FFT, MNDCT

Introduction

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' application for dispute resolution application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord duly served with the tenants' Application and evidence.

Preliminary Issue: Landlord's Late Evidence

The tenants confirmed that they had received the landlord's evidentiary materials, although they did not receive it until March 30, 2022. The tenants confirmed that they did have the opportunity to review the materials.

Rule 3.15 of the RTB's Rules of Procedure establishes that "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing"

Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case I am satisfied that the tenants had an opportunity to review the landlord's evidentiary materials. Accordingly, I allowed the landlord's late evidence to be admitted for the purposes of this hearing, and the hearing proceeded as scheduled.

Preliminary Issue—Amendment to Tenants' Application

The tenants filed an amendment to their application on March 28, 2022, which the tenants served on the landlord by way of registered mail. In accordance with sections 88 and 90 of the Act, the packaged is deemed served on April 2, 2022, 5 days after mailing.

Rule 4.6 states the following:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute

Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the by the respondent(s) not less than 14 days before the hearing.

As this amendment was not received in accordance with RTB Rule 4.6, and as the respondent has the right to review and respond to the amendment and supporting evidence, the package will be excluded and not considered as part of this application.

At the outset of the hearing, the tenants confirmed that they were withdrawing their application disputing a rent increase. Accordingly, this portion of the tenants' application was cancelled.

Issues(s) to be Decided

Are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to the rent reductions requested?

Are the tenants entitled an order to suspend or set conditions on the landlord's right to enter the rental unit?

Are the tenants entitled an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of both applications and my findings around it are set out below

This tenancy began on August 1, 2020. The tenants entered into a new, 1 year fixed term tenancy agreement commencing September 1, 2021. Monthly rent is set at

\$4,000.00, payable on the first of the month. The landlord collected a security deposit of \$2,000.00, which the landlord still holds.

The tenants requested compensation in the amount of \$3,000.00. which is equivalent to a rent reduction of \$500.00 per month for six months for the landlord's failure to address repairs and outstanding issues.

The tenants also requested several orders, including for the landlord to comply with the Act and tenancy agreement, for an order restricting the landlord's access to the rental unit, an order that the landlord perform required repairs.

The tenants testified that the landlord has failed to repair issues in the rental unit despite repeated requests for the landlord to do so. The tenants submitted photos of various issues in the rental unit, including a leaking refrigerator, missing blinds, a fence in disrepair, holes in the walls, and a slow drain in the bathtub. The tenants testified that the landlord has only done a few repairs such as to the fireplace and the safety railing, but the majority of the repairs have not been addressed. The tenants testified that when the landlord does attend, the landlord would show up with proper notice, and would harass the tenants with text messages and knocks at the window. The tenants submitted text messages and phone logs to show that the landlord had called at 2:39 a.m, as well as a text message from the landlord on July 31, 2021 at 2:37 a.m. stating that the landlord had "never seen the house with lights so early in the morning".

The tenants testified that the leaking refrigerator is still actively leaking, and the tenants would have to spend a significant amount of time cleaning the large puddles. The tenants also note that the landlord has failed to replace the missing blinds, causing the tenants to lose privacy. The tenants testified that when they approached the landlord about the broken fence, the landlord requested that the tenants speak to the neighbours about the repairs. The tenants testified that many of the issues were there since the beginning, and the landlord has not addressed them such as the holes in the walls. The tenants testified that it was a painful process requesting repairs, and they have suffered a significant loss in the value of the tenancy.

The landlord testified that they live in close proximity to the rental property, and that they always text or call the tenants for permission before entering. The landlord testified that the conversations were always cordial, and dispute that they had ever entered without proper notice or permission. The landlord also denies harassing the tenants, or knocking or purposely peaking through the windows. The landlord testified that the windows were large, and that they were able to see inside without peaking.

The landlord testified that the refrigerator was still operational, and that they had never noticed the leak. The landlord testified that the tenants did not submit the complete history of text messages between the parties, and that there was a conversation about the fence. The landlord testified that as the fence belongs to two owners, the landlord required time to talk to the other owner about the repairs. The landlord does not deny that they had requested help from the tenants as they were not able to obtain the contact information for the neighbouring tenants who occupied the adjacent property.

The landlord testified that they had made note of the condition of the rental unit at the beginning of the tenancy, and that they did not agree to perform repairs to all the items that they considered still in good condition. The landlord testified that they did repair the items noted such as the screens and fireplace. The landlord testified that when they were overseas, the time zone difference contributed to a slight delay in their response time.

The landlord testified that the plumbing was the responsibility of the tenants as they had clogged the fixtures as evidenced by the empty toilet paper rolls. The landlord argued that the tenants failed to support the losses claimed, and that they eventually did pay when they received proper invoices. The landlord testified that the clog was not considered an emergency, and that the attending plumber did not find any issues than a blockage which the landlord believed was caused by the tenants.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

In this case the tenants requested a monetary order of \$500.00 per month for a period of six months. As noted above, in assessing their claim, the party applying for dispute resolution bears the responsibility of demonstrating entitlement to that monetary award. In the case.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

32 (1) *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 a tenant.

RTB Policy Guideline #1 provides further clarity as to what repairs and maintenance falls under the responsibility of the landlord.

The tenants' testimony is that the landlord has only repaired some of the outstanding issues in this tenancy, and only after repeated requests. The tenants feel that the landlord has ignored or avoided their obligations to repair the other issues still outstanding. The landlord responded that they had undertaken required repairs in a timely manner.

In consideration of the evidence and testimony before me, I find that the landlord has not addressed all the outstanding issues in this tenancy. I find that the tenants have been clear in communicating what these outstanding issues are, but the landlord does not agree about the urgency or the merits of these requests.

I note that many of the items referenced in the tenants' application fall under the landlord's responsibility for repairs, but have not been addressed properly by the landlord. For example, the fence remains broken. As per RTB Policy Guideline #1, "The landlord is responsible for maintaining fences or other fixtures erected by him or her."

Furthermore, I find that the tenants provided supporting evidence to support that that refrigerator is not working properly. Although "operational", the refrigerator is leaking, causing the tenants concern not only about whether the refrigerator is functioning properly, but also the trouble of ensuring that water is not pooling on the floor.

The tenants also describe clogged drains. Although I do note that the landlord has addressed some issues that have arisen during this tenancy, it appears that the landlord has rejected the tenants' requests to maintain or repair certain issues as the landlord deems the reason or cause of these problems to be the tenants' use. In light of the evidence before me, I am not satisfied that this conclusion is supported in evidence. For example, the existence of empty toilet paper rolls does not necessarily mean that the tenants have clogged the toilet. The landlord has not provided sufficient or expert evidence to prove that positive correlation between amount of toilet paper use and the clog, and even in the event of a positive correlation, the landlord has not provided evidence to prove causation.

Although I note some repairs may be cosmetic, such as the holes in the walls, I find that many of the issues described remain unaddressed although they fall under the obligation the landlord to address.

Given the testimony and evidence before me, I order that the landlord maintain the property, and undertake and complete repairs as required by section 32 of the *Act*, and in accordance with Policy Guideline #1. I specifically order that the landlord address the broken fence and leaking refrigerator on or before June 30, 2022. In the event that

either item cannot be repaired, I order that the landlord replace these items with an item of similar or equal function and value by July 31, 2022.

In consideration of the holes in the walls and the missing blinds, although there is reference in the move-in inspection report about repairing the screens, there is no reference to an agreement to repair the blinds or the holes. I find that the condition of these two items were noted as required for inspection purposes to assist the parties in determining damage caused during the tenancy. I find that the blinds and holes, although unappealing, do not fall under the landlord's obligations under the *Act*. I decline to make any orders in relation to these two items.

I order that the landlord comply with the specific orders above to repair the refrigerator and fence as noted above. I also order that the landlord perform any other repairs as required by the *Act*.

In regards to the tenants' application for a rent reduction, I refer to section 27 of the *Act* as noted below:

Section 27 of the *Act* establishes the basis for a landlord to terminate or restrict services or facilities with respect to a tenancy:

27 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

RTB Policy Guideline #22 provides further clarification of what constitutes an essential facility or facility:

B. ESSENTIAL OR PROVIDED AS A MATERIAL TERM

An “essential” service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation or use of the manufactured home site as a site for a manufactured home, the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

Although the refrigerator may be considered an essential facility, I find that the refrigerator was still functional. Furthermore, although the fence may also have been essential for the tenants, I am not satisfied that the tenants have supported the value of this loss.

Although I acknowledge that the tenants were impacted by the broken fence, the leaking refrigerator, and the landlord's failure to respond in a timely manner in relation to their requests, I am not satisfied that the tenants provided sufficient evidence to support the rent reduction claimed

Residential Tenancy Branch (“RTB”) Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the tenants nominal damages of \$50.00 per month for six months, for a total monetary order of \$300.00. In the event that the landlord does not comply with the order above to repair or replace the refrigerator and fence by the designated timelines, I further order that the tenants be provided with a

rent reduction of \$100.00 per month commencing on August 1, 2022 until these two items are repaired or replaced.

I have considered the other requests by the tenants', and although I find it concerning that the landlord is sending messages to the tenants at 2:37 a.m., I do not find that any further orders are necessary at this time. However, I do remind the landlord of their obligations under the *Act* to provide proper notice or obtain permission from the tenants before entering their rental unit, and also of the tenants' right to quiet enjoyment of their rental unit.

Landlord's right to enter rental unit restricted

29 (1)A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i)the purpose for entering, which must be reasonable;
 - (ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c)the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d)the landlord has an order of the director authorizing the entry;
- (e)the tenant has abandoned the rental unit;
- (f)an emergency exists and the entry is necessary to protect life or property.

(2)A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Protection of tenant's right to quiet enjoyment

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.

I allow the tenants to recover the \$100.00 filing fee for this application.

In order to implement the monetary awards granted in this application, I allow the tenants to reduce a future monthly rent payment until the full amount is paid.

Conclusion

I issue the tenants a monetary order in the amount of \$400.00, which includes a monetary award of \$300.00 plus recovery of the \$100.00 filing fee. In order to implement the monetary awards granted in this application, I order the tenants to reduce a future monthly rent payment until the full amount is paid. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$400.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord 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.

I order that the landlord maintain the property, and undertake and complete repairs as required by section 32 of the *Act*. I specifically order that the landlord repair the broken fence and the leaking refrigerator on or before June 30, 2022, or have these items replaced by July 31, 2022 if the repair is not possible. I allow the tenants to deduct \$100.00 per month starting August 1, 2022 if the landlord does not comply with this order.

The remainder of the tenants' application is dismissed with 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: May 16, 2022