



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHIRLYN INVESTMENTS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, LRE, MNDCT, FFT

Introduction

On September 28, 2021, the Tenant made an Application for a Dispute Resolution Proceeding seeking a repair Order pursuant to Section 32 of the *Residential Tenancy Act* (the “*Act*”), seeking to set conditions on the Landlord’s right to enter pursuant to Section 70 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On January 24, 2022, the Tenant amended his Application seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

This hearing was the final, reconvened hearing from the original Dispute Resolution hearing set for February 28, 2022. The original hearing was adjourned as per an Interim Decision made dated February 28, 2022. The final, reconvened hearing was set down for June 6, 2022 at 9:30 AM.

The Tenant attended the final, reconvened hearing. R.S., J.D., and G.M. all attended the reconvened hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

At the original hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. The Tenant was informed that the issue with the highest priority would be addressed, and he was asked which issue he would like to make submissions on. He advised that the main issue that he would like addressed was that of monetary compensation, and he was reminded that this would generally be of the lowest priority. Regardless, as this was the issue that the Tenant elected to deal with, these hearings addressed those claims of monetary compensation. The Tenant was aware that his other claims would be severed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

It should be noted that, as per the Interim Decision, the Tenant served an updated monetary order worksheet to the Landlord late, and not in compliance with the Rules of Procedure (the "Rules"). As such, only the Tenant's claims for compensation in the amount of **\$5,050.00**, will be address in this Decision.

At the original hearing, service of the Notice of Hearing package was confirmed. In addition, the Tenant advised that he served his evidence to the caretaker by hand on or around January 24, 2022, but he did not check to see if the Landlord could view the digital evidence in accordance with Rule 3.10.5 of the Rules. J.D. confirmed that this package was received, but only some videos could be viewed. Based on this undisputed testimony, I am satisfied that the Landlord has been served with the Tenant's documentary evidence in accordance with the timeframe requirements of Rule 3.14. As such, this evidence will be accepted and considered when rendering this Decision. However, as the Tenant did not confirm about the digital evidence, this evidence will be excluded and not considered when rendering this Decision.

J.D. advised that the Landlord's evidence was served to the Tenant on or around January 27, 2022, by being posted to the Tenant's door. The Tenant confirmed that he received this evidence that day. Based on this undisputed testimony, as this evidence has been served in accordance with the timeframe requirements of Rule 3.15, this evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 4, 2018, that rent was currently established at \$1,092.00 per month, and that it was due on the first day of each month. A security deposit of \$525.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

As noted in the Interim Decision, there was a considerable delay as it took the Tenant a significant amount of time to decide on what issues were to be addressed. Eventually, the Tenant elected to pursue claims for monetary compensation in the amount of **\$5,050.00**, and R.S. understood the nature of the Tenant's claims.

At the original hearing, the Tenant advised that he was seeking compensation in the amount of **\$1,800.00** because a sliding window would not open smoothly, from the outset of the tenancy. He stated that he advised J.D. verbally of this issue in July 2018, then again in writing in January 2019, and continuously after that by text and email. He submitted that at one point, J.D. removed the window for a few days, that it was oiled, and that J.D. re-installed it, but it was put in the wrong way. He testified that he was unable to use the window at all, but it was necessary to be able to open it during the summer months. He did not have any explanation for why he did not make an Application for a repair Order for this issue prior to this Application. He stated that the new building manager has now fixed this issue.

J.D. advised that he was informed by the Tenant of the issue; however, the window still opens, but not smoothly, which was corroborated by the Tenant's own testimony. He was uncertain if the Tenant brought this up to his attention prior to COVID, and he could not recall ever removing the window. He stated that he was prevented from making the repair as the Tenant refused entry into the rental unit, and he referenced a prior

Decision of the Residential Tenancy Branch that supports this allegation (the relevant file number is noted on the first page of this Decision). As well, he stated that a glass company could not attend to the repair due to COVID.

The Tenant advised that J.D. removed the window for two hours in January 2019 and that J.D. came back to try and repair the window 24 hours after he was served a Notice of Hearing package for the above-mentioned file. He stated that pieces of aluminum are shaved off if he tries to open and close the window. As well, he noted that the new building manager simply replaced the Teflon in the window, which fixed the issue. He stated that this could have been done easily before by J.D.

At the reconvened hearing, J.D. advised that the first time this issue was brought to his attention was during the hearing of October 5, 2020, and that this occurred during a period of COVID where entering rental units was not permitted.

The Tenant advised that in the hearing on October 5, 2020, the Arbitrator accepted that J.D. entered the rental unit in January 2019 to take out the window. He stated that his claim for compensation is only for the months during the year when he needed to be able to open the window.

At the reconvened hearing, the Tenant advised that he was seeking compensation in the amount of **\$900.00** because he could not shut off the thermostat completely and that he was overheating all the time. This compromised his health as he would be forced to wake up every two hours during the night to open a window. He stated that he brought this to the Landlord's attention in March 2021 and that J.D. sent a plumber to investigate. He submitted that the plumber could have fixed it, but J.D. did not want to pay to have it fixed. He informed the new building manager of this issue in January 2022, and it was fixed within two weeks. He referenced the documentary evidence to support this position. He stated that the compensation he is seeking is for this loss from March 2021 to January 2022.

J.D. advised that he was first informed of this issue on May 27, 2021, and that a plumber investigated the problem on June 23, 2021, but found no issue. He stated that the boiler is shut off on June 5 for the season, but it was turned on on June 7, 2021, and the Tenant complained about the heat issue on June 14, 2021. He submitted that the Tenant simply needed to shut off the valve, and that there was a part of the radiator that was causing the issue.

R.S. advised that a new boiler was installed prior to COVID, and that they attempt to address every complaint. However, this was made more difficult during COVID.

The Tenant advised that the Landlord should not be turning the boiler off at all. He submitted that J.D. stated that the heating system was old and that he did not fix the issue because he wanted to save money, so he ignored this issue.

Finally, the Tenant advised that he was seeking compensation in the amounts of **\$2,300.00** and **\$50.00** because of issues in the bathroom. He stated that he complained in March 2020 because the shower would get totally cold or hot, but he was informed that this was not urgent due to COVID. He testified that the faucet was probably 60 years old, that it was rusted, and that it was not functioning properly. However, the cartridges were changed in September 2020, which resolved the issue.

He then stated that the bathroom sink faucet would not stay in the open position, and he informed the Landlord of this on March 18, 2020. He sent another email about this on April 8, 2020, when it was still not working, but the Landlord informed him that no messages were received. He stated that he fixed the faucet himself on April 24, 2020, and he referenced his documentary evidence to support this position.

Finally, he stated that there was an issue with the toilet constantly running and informed the Landlord of this on September 6, 2021. However, the Landlord informed him that there was no issue with the toilet. He stated that the total compensation being sought is for the loss of these functioning services from March 2020 to January 2022.

J.D. advised that the Decision dated October 20, 2020, confirmed that the parties agreed that the shower and bathroom sink issues had been repaired already. He stated that any parts were replaced in a reasonable timeframe after being informed of the issues by the Tenant.

The Tenant stated that these issues were occurring since March 2020, and that they were finally fixed in February 2022.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the

following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenant must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

I note that when establishing if monetary compensation is warranted, Policy Guideline # 16 outlines that when a party is claiming for compensation, “It is up to the party who is claiming compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

I also find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also need to turn to a determination of credibility. I have considered the parties’ testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

In addition, I also note that the Tenant was disorganized, scattered, and would jump

back and forth on different issues during the tenancy when providing submissions, some of which were not related to the above claims. This made it difficult to even obtain consistent information and dates on when the alleged problems occurred.

With respect to the Tenant's claim for compensation in the amount of \$1,800.00 because of the sliding window issue, I note that in the Decision dated October 20, 2020, it was determined that the Landlord attempted to address an issue with the window, but it was the Tenant who prevented the Landlord from completing this task. While it appeared as if there was still an issue with the window after this Decision, there is no evidence before me that the Tenant made any other Application to have this rectified until he made this Application on September 28, 2021. Had this truly been such a significant issue, it is not clear to me why he would have waited a full year to have this dealt with. Given that there was at least one other similar sized, functioning window right next to the one that he had an issue with, I am not satisfied that the loss that the Tenant claimed for was commensurate to the actual loss suffered. I find this is supported by the length of time between Applications. Consequently, I dismiss this claim in its entirety as I am not satisfied that the Tenant has sufficiently corroborated this loss.

Regarding the Tenant's claim for compensation in the amount of \$900.00 for a faulty thermostat, I note that the Landlord is not permitted to shut off the boiler at any point in the year, as this would likely constitute a service or facility that is essential to the Tenant's use of the rental unit. Regardless, when reviewing the evidence before me, I accept that there likely was an issue with the thermostat based on the Landlord's text reply on June 19 stating, "Our plumber is looking for a replacement cartridge for your heater valve. The system is very old and may be hard to find." This is despite the text message also stating, "When we were in the other week both the valve and the tower were functioning the same as the other apartments." However, while the Tenant was seeking compensation for the months of September to June, I can reasonably infer that some of these months required heat, and the loss suffered would have been lessened. As such, I am not satisfied that the Tenant has adequately established the amount of compensation being sought. Consequently, I grant the Tenant a monetary award in the amount of **\$300.00**, which is based on the weight placed on my assessment of the evidence provided.

Finally, with respect to the Tenant's claims for compensation in the amounts of \$2,300.00 and \$50.00 due to issues with non-functioning items in the bathroom, while I accept that there were some items in the rental unit that were deficient (i.e. the shower and the bathroom sink faucet), I note that these were repaired prior to the October 20,

2020 hearing. In addition, when I review the October 20, 2020 Decision, it indicated that the Tenant failed to provide sufficient evidence to corroborate his claims. Moreover, in that Decision, it was noted that “I am satisfied with the submissions of both parties that the landlord made an attempt to make the changes requested but that it was the tenant who would not allow the landlord to complete the task.”

I find that this is important to note because when I review the Tenant’s submissions on this Application, he has labelled many files as “Abusive_Behaviour...” and I can reasonably infer that he is attempting to suggest that the Landlord’s responses are in some way abusive or hostile. However, when I read this correspondence, I do not find any language or tone which would be consistent with this description. Rather, when I review these files, I find that it is actually the Tenant that appears to be combative and antagonistic. Moreover, when reviewing other documentary evidence, and the Tenant’s testimony, I find that the more consistent depiction is that of the Tenant being unnecessarily belligerent, which is echoed in the Tenant’s noted opposition, in the October 20, 2020 Decision, of allowing the Landlord to fix the window issue.

When reviewing the totality of the evidence before me, I do agree that there may have been some repair issues that the Landlord was required to fix. However, I also find that the Tenant likely played a part in hindering those attempts as well, given the general tenor and content of the Tenant’s submissions and testimony. This causes me to place less weight on the significance or the likeliness of the claims and losses as suggested by the Tenant. Moreover, with respect to the toilet issue, I do not find there to be sufficient documentary evidence to support the Tenant’s claims that there was an issue with the toilet.

However, as it does appear that the Tenant did have some issues in the bathroom that required repairs, and that he was unable to use them in a routine manner for a period of time, I grant the Tenant a nominal monetary award of **\$50.00**, to satisfy these claims. This amount is based on the lack of sufficient documentary evidence to corroborate his claims satisfactorily.

As the Tenant was partially successful in these claims, I find that the Tenant is entitled to recover \$50.00 of the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Loss due to thermostat	\$300.00
Loss due to bathroom issues	\$50.00
Filing fee	\$50.00
TOTAL MONETARY AWARD	\$400.00

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$400.00** in the above terms, 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.

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: July 6, 2022

Residential Tenancy Branch