Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing convened by teleconference on March 17, 2022, to deal with the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for compensation for a monetary loss or other money owed and recovery of the cost of the filing fee.

The tenant, the landlord, and the landlord's interpreter attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The hearing continued for 44 minutes, at which time the hearing was adjourned due to the length of time taken for discussion of evidence issues. An Interim Decision was issued on March 18, 2022, which is incorporated by reference and should be read in conjunction with this Decision.

At the reconvened hearing, the tenant, the landlord and a different landlord interpreter attended.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. At the reconvened hearing, no parties raised concerns with service of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the

parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Has the tenant submitted sufficient evidence to support their monetary claim? Is the tenant entitled to recovery of the cost of the filing fee?

Background and Evidence

The tenancy began on September 1, 2020, for a fixed-term ending on August 31, 2021, for a monthly rent of $1,500. The tenant submitted the lease was renewed on September 1, 2021, with a monthly rent of $1,525. The tenant paid a security deposit of $750.

The rental unit was in the basement level of a home owned and occupied by the landlord on the upper levels.

The tenant's original monetary claim was as follows:

Dispute Reason	Monetary Amount	Reason/description	breakdown
Loss of use of 40% of rental unit	2544.66	Loss of master bedroom/loss of living room/loss of dining room	49.31 day x 129 days=49.31daily rentx40% space loss
Tenant insurance deductible	500.00	Forced to make an insurance claim	500.00 total cost of deductible
Loss of wages	267.30	Was forced to come home on Friday, Dec4 to move items out of bedroom for clean up crew	7.5hrsx34.64hr
Future insurance premium rate increase	500.00	Premiums increase calculated due to insurance claim for past lease and renewed lease	25.00x20 months
Stress, time, inconvenience	500.00	The stress of the move, stress of financial strain, lack of 24 hour access notices, my time	125.00 month x 4
TOTAL MONETARY COMPENSATION	[redacted]		

[Reproduced as written]

The tenant's amended monetary claim included the following:

Document Number	Receipt / Estimate From	For	Amount
#1	3 weeks rent	compensation for having to move out	$ 1125.00
#2	120 days x $10.00 a day	stress, time loss, anxiety, inconvenience	$ 1200.00

[Reproduced as written]

Therefore, the tenant's total monetary claim from the evidence above is **$6,136.96** as laid out in the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of use, 40%	$2,544.66
2. Tenant insurance deductible	$500.00
3. Loss of wages	$267.30
4. Future insurance increase	$500.00
5. Stress/time loss/anxiety/inconvenience (amended amount, increased from original $500)	$1,200.00
6. Compensation for having to move out (amendment)	$1,125.00
TOTAL	**$6,136.96**

In support of their monetary claim, the tenant provided documentary and photographic evidence. At the hearing, the tenant referred to their written statement for providing a timeline and explanation of their monetary claim.

In summary, the tenant wrote that they noticed water dripping from the doorway into the furnace room from the upstairs second floor. On December 4, 2020, an emergency restoration company came to remove drywall and damaged flooring from the rental unit

master bedroom resulting in a loss of a days pay because that company required them to remove the contents of the master suite.

The tenant said that the landlord fired the first company and hired another restoration company, who came on-site on December 7, 2020. The tenant submitted they were given 30 minutes notice so the restoration company and adjuster from the landlord's insurance could come into the rental unit. The tenant submitted that the restoration company came into the rental unit three times that week, all without a 24 hour notice.

According to the tenant, the landlord and tenant met, at the landlord's request, at which time the tenant was told they would have to move out of the suite in order for restoration to be completed. The tenant questioned that the insurance company made a determination that quickly or why alternative solutions were not considered. The tenant submitted they have yet to be given proof the landlord's insurance company authorized the entire square footage of flooring to be replaced and asserted the landlord was trying to "reno-evict" them as there was only 1/3 of the master bedroom that was damaged.

The tenant submitted they requested a scope of work and the contact person authorizing the "eviction". When the tenant received the scope of work, they were shocked. Following, being upset that they would have to completely vacate the suite due to the unnecessary work, the tenant contacted the landlord and voiced their concerns about having to move out.

On January 7, 2021, the tenant met with the project manager and found them rude, disrespectful and unprofessional. The tenant alleged that the project manager and landlord conspired against him due to their conversations being in a language they did not understand. This led to the tenant asking the manager's name and location so they could make a complaint, but the information was not given. The tenant submitted that the drywall work would begin on January 8, 2021, which was cancelled almost immediately and did not resume until March 9, 2021, when they "were forced to move out".

The tenant submitted that work began upstairs in the landlord's second floor on January 1, 2021, which caused noise and disruption to my sleep and life, with the noise being described as "banging, saws running, power equipment". The tenant submitted that they were not provided a work schedule and was given less that 24 hour notices on numerous occasions, resulting in violations of the Act and serious inconvenience. The tenant asserted that the landlord entered their rental unit illegally when turning off the

water, on one occasion. The tenant submitted that the landlord did not do their due diligence in ensuring that the entries to their suite met the 24 hour requirement and holding the restoration company completing their renovation accountable. The tenant submitted the landlord's illegal entry caused "massive amounts of stress, mistrust, anger, anxiety, and disappointment". The tenant submitted the text messages for entries.

The tenant submitted that they asked the landlord if the flooring could be replaced when they moved out in September as they did not feel right being forced to make an insurance claim to completely move out over one room that had damage from a flood. The landlord submitted that their insurance company declined this request, but provided no proof. The tenant submitted that the landlord said they had to start the replacement soon as their insurance company said the claim must be issued in two months after the damage occurred, or in this case, December 7, 2020, which caused them pressure to start a claim. The tenant submitted they opened a claim, but had no intention of making a claim for such little damage. Later, the tenant submitted that the landlord informed them the February 2 deadline was in error, as this was the deadline for the tenant's insurance company to make a claim with the city in order to be reimbursed the insurance payout and their deductible. The tenant asserted the landlord delayed in giving them this information until it was too late, which is why they are claiming the $500 insurance deductible.

The tenant submitted that they sent a revised schedule which accommodated their work and the offered alternate dates, which the landlord declined, causing the tenant extra

pressure. The tenant submitted that they had to vacate the rental unit for 4 weeks, which included their pre-planned vacation time.

The tenant additionally submitted email communication between the parties, email communication between the tenant and their insurance company, photographs, a restoration company's scope of work, and text message communication.

Landlord's response –

To support their response, the landlord provided, in part, email and text message communications between the parties, photographs, and two lengthy written submissions.

Within the landlord's written statement, arranged in a table format, the landlord submitted that the damage and loss was caused by a backup in the city sewer waterline on December 3, 2020. This caused damage to the wood floor in the main floor and ceiling, wall and floor of the basement. An emergency company attended to deal with the emergency issues, such as plumbing, baseboard, vanity and proper disinfectant. As well, all electrical was checked. The timeline of repair was December 3, 2020, through March 25, 2020.

The landlord wrote that from December 8, 2020, the landlord had to wait for the tenant's decision to move out of the rental unit. From January 2021 to March 11, 2021, the restoration schedule had been changed three times to accommodate the tenant's schedule. When the tenant did vacate, the restoration in the rental unit took 14 days. While the rental unit was ready on March 26, 2021, the tenant moved back in on April 8, 2021, due to a vacation.

The written statement provided that all requests to access the rental unit were sent to the tenant by text and all were approved.

The landlord denied that there was an attempt to "reno-evict" as the tenant moved back into the rental unit as soon as repairs were completed and after the tenant's vacation, and as of the date of the written evidence, the tenant remained in the rental unit.

The landlord denied the loss of use portion of the tenant's monetary claim as the tenant refused to move out for the restoration although requested to do so. The landlord wrote that the tenant complained about workers in the rental unit, but refused to move out

while work was being completed. The tenant argued with the restoration company, according to the landlord. The tenant's refusal caused a delay in the restoration project.

The landlord denied being responsible for the tenant's insurance deductible as the landlord did not cause the situation and the tenant was responsible for obtaining tenant insurance.

The landlord denied responsibility for the loss of wages, as the tenant's evidence shows they worked on December 4 and the wage clip evidence shows no record of a day off on December 4, 2020.

The landlord denied responsibility for a future insurance premium increase, as the city's sewer line caused the backup and flood, and there was no evidence of an increase.

The landlord denied responsibility for stress, time and inconvenience as the landlord was not responsible for the flood in the rental unit, during the pandemic, everyone has been stressed, and there was no evidence supporting that claim. The landlord wrote that the restoration schedule was changed 3 times and the landlord made all efforts to finish the repair as soon as possible.

The landlord denied the claim of $1,125 for loss of rent, as they paid the tenant $1,125 by cheque, for the pro-rated rent covering the restoration period and the tenant's packing and moving days.

Analysis

I have considered the relevant evidence of each party and reached a decision taking into account the Act, Regulation, policy, on the balance of probabilities.

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results.

Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party.

Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

The claiming party, the tenant in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I have reviewed the considerable evidence from both parties before me and find that all issues in this dispute arose from the backup to the city sewer waterline. The evidence showed the city took responsibility for the sewer line backup. I find this event was unforeseeable and was not caused by landlord negligence or breach of the Act or tenancy agreement. I also find the tenant submitted insufficient evidence that the landlord delayed in addressing the flood, as an emergency cleaning company attended the residential property the next day. Following that, the landlord contacted their insurance company and a restoration company was hired.

I find the claims relate to the tenant's disagreement with the assessment and recommendations of the restoration company's scope of work. The tenant disagreed that they were required to vacate as they believed only one small area of floor was damaged. I find the restoration company's scope of work showed substantially more work to be in the basement level than the tenant claimed.

It is not up to the tenant to determine what repairs are required or necessary. The landlord has the right to make repairs to the residential property as they or the professional restoration company hired to restore the property determine necessary. Further, I find it is not upon the tenant to disagree with the restoration company's timeline and find the tenant has no basis to challenge this report and request. The landlord also suffered a loss and inconvenience with the flood and I find the evidence shows the landlord was following the direction of the restoration company hired to restore the residential property.

I find the tenant interfered with the timely restoration of the residential property when they delayed their move-out by many weeks and delayed in contacting their insurance company. In one email filed by the tenant, they refused to vacate when requested. Other emails show the tenant seeking information in order to discuss matters with the

restoration company. The tenant was ultimately provided the scope of work, which the tenant challenged.

As to the tenant's claim for loss of use, I find that a tenant's insurance policy generally covers expenses for damage to contents, storage, hotel, gas, moving, and food costs. As the tenant obtained insurance for their rental unit, I find it was the tenant's choice to remain in the rental unit longer than necessary, as they delayed their move-out by weeks. Had the tenant vacated when requested, they likely would have been out of the rental unit for only two weeks, as this was the amount of time for the work in March 2021.

As the landlord clearly was attempting a restoration so the tenancy could continue, I cannot find the landlord was attempting any form of "reno-eviction".

For all the above reasons, I **dismiss** the tenant's claim for loss of use of 40%, for **$2544.66**, without leave to reapply, due to insufficient evidence and lack of mitigation.

As to the tenant's claim for their insurance deductible, as I have found that the landlord did not cause or create the unforeseen flood, I **dismiss** the tenant's claim for **$500**, without leave to reapply. The tenant was obligated under the written tenancy agreement to obtain tenant insurance for just these type of situations that may occur.

As to the tenant's claim for loss of wages, I find the tenant submitted insufficient evidence to hold the landlord responsible for a loss of wage for an event they did not cause or create. I therefore **dismiss** the tenant's claim for **$267.30**, without leave to reapply.

For the same reason that I have dismissed the tenant's claim for their insurance deductible, I find the landlord cannot be held responsible for an increase in the tenant's insurance premium. I therefore **dismiss** the tenant's claim for **$500** for an increase of insurance deductible, without leave to reapply.

As to the tenant's claim for compensation of $1,125, the tenant asserts that this amount was compensation for having to move out to which the landlord agreed. The landlord asserts that they paid the compensation and the tenant deposited the cheque in that amount. I have reviewed the email evidence and find that the landlord did not agree to pay the tenant extra compensation just for moving out, rather the email of March 15, 2021, specifically refers to "Free rent cover". I find on a balance of probabilities that the

landlord's intention was to reimburse the monthly rent that was paid. The tenant was still obligated under the Act and their tenancy agreement to pay the monthly rent. I find the tenant submitted insufficient evidence to support their claim or on what basis that they are entitled to compensation for temporarily relocating during restoration work. I therefore **dismiss** the tenant's claim for **$1,125**, without leave to reapply.

As to the tenant's claim for $1,200 for stress, time loss, anxiety, and inconvenience, I find section 28 of the Act applies.

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:
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> (a)reasonable privacy;
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> (b)freedom from unreasonable disturbance;
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> (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.

In addition, Tenancy Policy Guideline 6 provides as follows, in part:

> **B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**
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> 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.

> 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. A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Further, Guideline 6 provides:

> Compensation for Damage or Loss 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. A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

Although the tenant claimed for stress, time loss, anxiety, and inconvenience, I find the tenant submitted insufficient evidence of each component of this claim and how they arrived at this figure.

While I acknowledge that the tenant suffered an inconvenience from the city sewer backup, I also find that a large part of this inconvenience was brought upon the tenant when they refused to vacate even though requested to do so by the landlord at the restoration company's request in order to complete the restoration of the basement. I find the evidence shows that the tenant delayed in moving from the rental unit and delayed in contacting their insurance company to make a claim.

I find that the tenant did suffer an inconvenience resulting from the flood and the entries to the rental unit for restoration workers. I find that some of these entries may have been without the proper 24 hour notice, I however find that these entries were

reasonable under the circumstances in order to facilitate the restoration in a timelier manner.

I find the evidence shows the landlord was clearly aware that a 24 hour notice was required, but the circumstances at hand in attempting to finish the work while tradespersons were available, at times, prevented such notice.

Taking into consideration that if the tenant temporarily vacated when requested so that the renovations could be made, he would not have been residing in the rental unit when some entries were made, I still find the tenant is entitled to nominal damages for repeated entries into the rental unit.

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, I award the tenant nominal damages for inconvenience of $300.

As the tenant has been partially successful in their claim, I find they are entitled to recover the cost of the filing fee of $100 from the landlord.

Given the above, I grant the tenant a monetary order in the amount of $400, pursuant to section 67 of the Act.

Should the landlord fail to comply with this monetary order, this order must be served to the landlord for enforcement and may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant's monetary claim for $6,136.96 is dismissed, without leave to reapply.

The tenant has been granted nominal damages of $300 and recovery of their filing fee of $100, resulting in a monetary order for **$400** being granted to the tenant.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: August 02, 2022

Residential Tenancy Branch