



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, OLC, MNDCT, RP, RR, PSF**

Introduction

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

- authorization to recover the filing fee for this application from the landlord pursuant to section 72.
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;

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. In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

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 tenant said that the repair issues have been resolved and withdrew those portions of their application.

Issue(s) to be Decided

Is the tenant entitled to any of the relief sought?

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 2014. The current monthly rent is \$1,245.00 payable on the first of each month. The rental unit is a suite in a multi-unit building. An amenity included in the monthly rent is access to a shared roof top deck of the rental building. The roof top deck is an uncovered open area with some seating available for the residents of the building during certain hours. A copy of the tenancy agreement was submitted into evidence.

The parties agree that from September 27, 2021 to August 17, 2022 the roof top deck could not be accessed. The landlord submits that they discovered leaks and structural issues which required repair work, inspection and approval from third parties that the roof was safe to access. The landlord provided detailed testimony on the timeline and nature of work that was done from September 2021 to date which restored the roof top to usable condition. The landlord testified that the roof top has been made accessible to the residents again as of August 17, 2022 and it is open from 8:00am to 10:00pm.

The tenant submits that any repairs to the roof did not require preventing access to the residents and that the landlord could simply have cordoned the area of work while continuing to allow tenants access to the roof top deck. The tenant further submits that

they should be allowed access to the roof top 24 hours a day as the tenancy agreement does not stipulate hours.

The tenant seeks a retroactive rent reduction in the amount of \$200.00 for each month that the roof top deck was unavailable. The tenant also seeks an order that the roof top deck be opened up for all hours of the day and they be allowed to access it freely at all times.

Analysis

I accept the undisputed evidence of the parties that the tenant had no access to the roof top from September 27, 2021 to August 17, 2021.

Section 27(1) deals with restriction of services and facilities and provides that:

- 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.

I find that the roof top deck is not an essential element of the tenant's use of the rental unit nor a material term of the tenancy. The rooftop is a common area accessible to the residents of the building, with certain limitations. I find no reasonable way that access forms an essential part of the use of the rental unit.

Residential Tenancy Policy Guideline 8 defines a material term as a term that is so important that the most trivial breach of that term gives the other party the right to end the agreement. I find little evidence to support that use of the roof top is a material term of this tenancy. While I accept that use of the roof top is a named service or facility including in the tenancy agreement, I find this to be a minor amenity rather than a material term so significant to the tenancy agreement that it can not be terminated or restricted pursuant to the *Act*.

I do not find that the absence of information about accessible time on the tenancy agreement means that the roof top should be opened for all hours of the day and night. Pursuant to section 28 of the *Act*, a landlord has obligations to protect tenant's right to quiet enjoyment including freedom from unreasonable disturbances and use of common

areas for reasonable purposes. I find that, as part of the reasonable exercise of their power, placing restrictions on the hours that a common area can be used is reasonable and necessary in a multi-unit building. I find the hours cited by the landlord of 8:00am to 10:00pm to be reasonable under the circumstances. Accordingly, I decline to issue an order allowing the tenant to access the roof top for 24 hours a day.

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 (1)(f) of the *Act* allows me to reduce the past or future rent by an amount equivalent to the reduction in value of a tenancy agreement.

I accept the evidence of the parties that the roof top became inaccessible from September 27, 2021 to August 17, 2022. I find the landlord's testimony regarding the structural issues, the safety hazards and the reasons for preventing access to be cogent, detailed and believable. I find the landlord's explanation that due to a combination of the ongoing Covid19 pandemic, supply chain issues, the nature of the repairs required and the weather conditions the repairs took longer than they otherwise would to be reasonable under the circumstances. Based on the explanation of the landlord I am satisfied that work was conducted in a professional and reasonable manner in a timely basis. I accept the landlord's explanation that the nature of the deficiencies meant allowing access to the other portions of the roof top, as the tenant suggests, was not reasonable.

While I find insufficient evidence that there has been a breach on the part of the landlord in conducting the repairs and ongoing work, I find that there has been some detrimental effect on the value of the tenancy. I find the evidence does not support the full amount of the tenant's monetary claim and their suggestion of the amount to be reduced is not supported in the materials. The tenant testified that they chose the amount of the monthly rent reduction of \$200.00 arbitrarily. I note that the figure represents approximately 16% of the monthly rent of \$1,245.00.

The tenant gave some testimony about the impact of the loss of access to the roof top but I find their evidence to be vague, lacking cogent details and not supported in independent documentary materials. I accept the evidence that the tenant would go up to the roof on occasion, but this was not a living space. I find little evidence that the roof top would be used with any regularity or form an integral part of the tenant's daily routine. Based on the evidence while I find that the loss of access to the roof top had some negative impact on the value of the tenancy, it is clear that the impact has been minor, with the tenant able to carry on their daily routines without any significant changes.

I further note that much of the period that the roof top was unavailable would have been during the inhospitable rainy, cold and snowy months and subsequently during extreme heat waves which would have reasonably prevented the use of the roof top.

Under the circumstances, I find a nominal reduction of 2.5% of the monthly rent for the period from October 2021 to August 2022 to be appropriate.

I issue a one-time monetary award in the tenant's favour of \$342.43, for a retroactive rent reduction as follows:

Monthly Rent \$1,245.00 x 2.5% = \$31.13 x 11 months (October 2021 to August 2022) = \$342.43

As the tenant was not wholly successful in their application, I decline to award the recovery of the filing fee for this application.

Conclusion

I issue a monetary award of \$342.43 for the retroactive rent reduction. As this tenancy is continuing I allow the tenant to satisfy this monetary award by making a one-time deduction of \$342.43 from their next scheduled rent payment.

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: August 19, 2022

Residential Tenancy Branch