



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WYNN REAL ESTATE LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **RR, FFT**

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on May 15, 2022 (the "Application"). The Tenants applied for an order granting a rent reduction and for a order granting the return of the filing fee, pursuant to the *Residential Tenancy Act* (the "Act"):

The Tenants and the Landlord's Agents J.L., and S.L. attended the hearing at the appointed date and time. At the start of the hearing, parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to a rent reduction, pursuant to Section 65 of the *Act*?
2. Are the Tenants entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on April 1, 2022. The Tenants are required to pay rent in the amount of \$2,600.00 which is due on the first day of each month. The Tenants paid a security deposit in the amount of \$1,300.00 which the Landlord continues to hold. The Tenants continue to occupy the rental unit.

The Tenants are claiming for a one time rent reduction in the amount of \$1,300.00. The Tenants stated that they participated in a condition inspection of the rental unit on April 1, 2022. The Tenants stated that there were several deficiencies which were noted and required repair. The Tenants stated that the Landlord has since repaired the deficiencies, however, the repairs took an unreasonable amount of time to complete. Furthermore, the Tenants stated they were unable to fully settle into their rental unit until mid April 2022. The Tenant provided a summary of deficiencies and repair date as follows:

Dirty windows, stickers on glass, mold on window trims, leftover items from previous tenant in cupboards (all these are signs that unit was not cleaned)

Missing lightbulbs (x6) . Provided April 12

Walls severely marked and scuffed throughout the unit. Painted April 12

Mold growth on the ceiling. Painted April 12

Carpets were not cleaned. Cleaned April 13

Toilets not functioning. Fixed April 26

Kitchen floor tiles cracked and falling out of place. Repaired April 26

The Tenants stated that they had viewed the rental unit prior to the commencement of the tenancy and did not notice the deficiencies at the time. The Tenants stated that the previous occupant may have damage the rental unit during their move out. The Tenants confirmed that all deficiencies have been repaired by the Landlord.

The Landlord's Agents confirmed that once they were made aware of the deficiencies, they took immediate action to correct them. The Landlord's Agents stated that they made arrangements to secure the trades persons, who were not readily available to make the repairs immediately, however, the work was completed in a timely manner. Furthermore, the Landlord's Agents stated that some delays were due to the fact that the trades persons were waiting on parts.

The Tenants stated that they had to do some cleaning after the repairs were done. Also, they were inconvenienced by having to move their furniture and stay off the new tiles for 12 hours after the repairs were completed.

Analysis

Section 28 of the Act, states that 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*
- (d) *use of common areas for reasonable and lawful purposes, free from significant interference.*

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

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.

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.

The Residential Tenancy Branch Policy Guideline #16 Compensation For Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- *Loss of access to any part of the residential property provided under a tenancy agreement;*
- *Loss of a service or facility provided under a tenancy agreement;*
- *Loss of quiet enjoyment;*
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and*
- *Damage to a person, including both physical and mental*

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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

Section 32(1) of the Act states that 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 the tenant.*

Section 67 of the Act empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the Act, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the Act. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

Based on the documentary evidence and oral testimony provided during the hearing and on a balance of probabilities, I make the following findings:

The Tenants are seeking a one time rent reduction in the amount of \$1,300.00. In this case, I accept that the parties agreed that the rental unit had some deficiencies which were noted during the condition inspection report. I find that the majority of the deficiencies noted by the parties were cosmetic in nature. I find that the Tenants have provided insufficient evidence to demonstrate that they loss a use of the rental unit.

I find that the Landlord took reasonable steps to repair the deficiencies and have fulfilled their obligation to repair and maintain the rental unit. I find that it is reasonable to expect that it takes some time to secure trades persons to conduct the work. I am satisfied that the Landlord completed many of the repairs within the first two weeks of the tenancy. I further find that the Tenants were not unreasonably disturbed or suffered a loss while the repairs took place.

In light of the above, I find that the Tenants have provided insufficient evidence to demonstrate that they are entitled to monetary compensation. As such, I dismiss their Application in its entirety without leave to reapply.

Conclusion

The Tenants' Application is dismissed without 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: September 26, 2022

Residential Tenancy Branch