



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order for monetary compensation pursuant to s. 67;
- an order for a rent reduction pursuant to s. 65 following the loss of a service or facility; and
- return of his filing fee pursuant to s. 72.

B.L. appeared as the Tenant. G.T. appeared as the Landlord. The Landlord was joined by L.R. as support. L.R. was not affirmed to tell the truth at the outset of the hearing and did not provide evidence or submissions at the hearing.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. The Landlord indicates she was not served with a copy of the tenancy agreement but raised on objection to this. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Is the Tenant entitled to monetary compensation?
- 2) Is the Tenant entitled to a rent reduction?
- 3) Is the Tenant entitled to the return of his filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant has been occupying the rental unit since May 1, 2013.
- Rent of \$1,082.00 is currently due on first day of the month pursuant to a rent increase that took effect on July 1, 2022. Prior to this, rent was payable in the amount of \$1,066.00 on the first day of each month.
- The Tenant paid a security deposit of \$500.00 to the Landlord.

I am advised by the parties that the rental unit is a condominium within a larger residential building.

The Tenant described that water and sewage entered the rental unit from a plumbing leak located in a wall behind the kitchen and the entryway to the rental unit. The Tenant testified that the leak was first discovered on November 27, 2021. I am told by the Tenant that a plumber came into the rental unit, made holes in the walls to access the plumbing to repair the leak. The affected flooring was removed from the rental unit and the Tenant says that the holes in the wall were repaired approximately a week or two after the leak started. The Tenant further stated that the flooring and repairs were not completed until February 2022. The Tenant's evidence includes photographs of the rental unit while it was under repair.

The Tenant testified that he became very sick during this time, including diarrhea and chronic fatigue. The Tenant was not specific on when his symptoms presented themselves or how long they lasted. The Tenant argued that his illness was due to exposure to toxic substances in the rental unit following the sewage leak. The Tenant says that there was asbestos within the walls that were exposed when the walls were opened by the plumber. The Tenant has provided no documentary evidence supporting his allegation that he was ill.

The Tenant claims the Landlord acted negligently with respect to the repairs and says that the repairs in the units occupied by their owners were undertaken more quickly. The Landlord denies this and says that she was in contact with the strata manager

regarding the repairs as the leak came from areas of the common property. The Landlord's evidence includes correspondence and invoices regarding the repairs.

The Tenant says his symptoms negatively affected his ability to work. In his application, he claims \$5,000.00 per month over three months for lost wages, totalling \$15,000.00. The Tenant says he is self-employed as a financial planner. The Tenant provides an estimate of the average salary for a financial planner from the website Investopedia, though provides no evidence directly pertaining to his income before and during the relevant period. I enquired with the Tenant on the personal impact he had with respect to his income. The Tenant argued that he claims the past wage loss as an opportunity cost and that his income is variable based on his passive income and commissions. The Tenant testified that \$5,000.00 per month is an appropriate estimate.

The Tenant also claims \$12,198.00 in his application on the basis that he should have been put up in temporary accommodations for three months and should not have paid rent at all for the three-month period. The Tenant says that a hotel nearby would cost \$3,000.00 per month and claims the cost of \$9,000.00 for what he should have been paid to stay there rather than occupy the rental unit. The Tenant further says that rent paid in the amount of \$3,198.00 should be returned in its entirety.

The Tenant further testified to how stressful the situation was and that it was one of the worst periods in his life. The Tenant says that he went on a vacation at the time due to the circumstances.

The Landlord denies that the amounts claimed by the Tenant are appropriate. The Landlord's written submissions acknowledge the disruption to the Tenant's use of the rental unit over the three-month period and that the Tenant is entitled to compensation, just not the amount claimed by the Tenant. The Landlord further emphasized that she did not receive complaint from the Tenant on any of these issues until a phone call on January 20, 2022. I am told during that phone call the Landlord expressed disappointment in the Tenant due to a discussion he had with the property manager, which prompted the Tenant to raise issue with his asserted health issues. The Landlord argued that the Tenant has a duty to mitigate his damages and by not communicating with her and continuing to occupy the rental unit the Tenant failed to do so.

Analysis

The Tenant seeks monetary compensation and a rent reduction.

Pursuant to s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim. In this instance, the Tenant seeks \$15,000.00 in past wage loss due to the rental unit repairs.

I find that the repairs constituted a breach of the Landlord's obligation to maintain and repair the rental unit under s. 32(1) of the *Act*. This point was conceded by the Landlord herself in her written submissions when she acknowledges the Tenant is likely entitled to some compensation and that the rental unit was in a state of disarray.

The Tenant has provided no evidence to support that there was a causal relationship between the repairs and his illness. The Tenant asks me to make an inference that since symptoms presented at the same time as the repairs, there must be a connection. On a fundamental level, the Tenant has provided no documentary evidence whatsoever to support that he was, in fact, ill during the relevant period.

The Tenant tells me he was exposed to toxic substances. However, I am left with no evidence to support a finding he was exposed to toxic substances, what those were, or that they caused the Tenant's symptoms. There appears to have been asbestos remediation as part of the repairs at the building, though the Landlord's invoice does not specify that the abatement company undertook the work within the rental unit or in other areas. The Tenant did not mention asbestos remediators came into his rental unit. I have a difficult time believing that qualified asbestos remediators would have permitted the Tenant to continue to occupy the rental unit during their remediation work if there was exposed or disturbed asbestos.

I find that the Tenant has failed to demonstrate a loss under s. 67 from the Landlord's breach of s. 32(1) of the *Act*.

I further find that the Tenant has failed to prove the value of the loss with respect to his past wage loss. The Tenant has provided no evidence related to his personal income, what it was prior to the three-month period, or how it compared during the period he claims to have been ill. I accept that his income may be variable, though he has provided no evidence with respect to his personal income at all, including how his income may vary over the year. The Tenant argues that there was an opportunity cost that should be compensated. I cannot make that finding without some concrete evidence on the Tenant's actual earnings.

I find that the Tenant has failed to demonstrate his monetary claim under s. 67. I dismiss it without leave to reapply it in its entirety.

Looking next at the past rent reduction claim, pursuant to s. 65 of the *Act*, where a landlord is found to have not complied with the *Act*, Regulations, or the tenancy agreement, the director may grant an order that past or future rent be reduced by an amount equivalent to the reduction in the value of the tenancy agreement. Generally, rent reduction claims are advanced when services have been terminated or suspended for repairs. Again, as this is the Tenant's claim, he bears the burden of proving it.

I have previously found the Landlord breached s. 32(1) of the *Act*. There is no dispute that the leak and repairs constituted a disruption in the Tenant's use and enjoyment of the rental unit. I find that it is appropriate that the Tenant be entitled to a rent reduction for the three-month period from December 2021 to February 2022.

The Tenant submits this should be \$12,198.00. There are two issues with this amount. First, it exceeds the total rent that was paid over the three-month period. The principle underlining rent reduction claims is that a tenant should not have to pay full rent when they did not have full use of what they had bargained for under the tenancy agreement. One cannot claim for an amount that exceeds what was paid in rent as it runs contrary to the principle underlining rent reduction claims.

Second, the Tenant claims \$9,000.00 for the cost of alternate accommodations that ought to have been retained. This runs contrary to compensatory principle put forward by s. 7 of the *Act* that compensation be related to a loss that results from the non-

compliance of the Landlord. With respect to the \$9,000.00, there was no loss as no costs were incurred.

The Tenant also submits that he should be compensated for all the rent paid over the three-month period. I do not believe this is proportionate to the loss of value to the rental unit. Over the relevant period, rent was payable in the amount of \$1,066.00. I accept that the leak affected the entryway, storage closet, and kitchen as shown in the Tenant's photographs. However, the repairs were undertaken over time, such that in the first two-weeks the disruption was greater than in February when all that was left was the replacement of flooring.

I find that it is appropriate to take a stepped approach rather than treat all three-months as the same. The disruption and loss of value was greatest in December 2021, which included the near total loss of the kitchen and sewage water in the entryway. I believe an appropriate rent reduction for December 2021 would be \$700.00 for this month. After the emergency repairs were undertaken, the carpets removed, the walls patched, the remaining issues were largely cosmetic, being the replacement of flooring, painting, and replacement of affected appliances. I find that an appropriate rent reduction for January and February 2022 would be \$300.00 for each month.

In total, I find that the Tenant is entitled to a rent reduction of \$1,300.00 over the relevant period.

Conclusion

I dismiss the Tenant's claim for monetary compensation under s. 67 of the *Act* without leave to reapply.

The Tenant is entitled to a rent reduction under s. 65 of the *Act*. I order that the Landlord pay the Tenant \$1,300.00 for past rent reduction.

Though the Tenant has received an order for rent reduction, he was largely unsuccessful in his application. Accordingly, I find that he is not entitled to the return of his filing fee. His claim under s. 72 of the *Act* is dismissed without leave to reapply.

Pursuant to s. 65 of the *Act*, I order that the Landlord pay **\$1,300.00** to the Tenant.

It is the Tenant's obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed by the Tenant with 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: September 19, 2022

Residential Tenancy Branch