



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order for monetary compensation pursuant to s. 67;
- an order pursuant to s. 70 to allow the Tenants or their guests access to their rental unit;
- an order pursuant to s. 65 for a rent reduction;
- an order pursuant to s. 65 that the Landlord provide services or facilities;
- an order pursuant to s. 32 for repairs to the rental unit;
- an order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement; and
- return of their filing fee pursuant to s. 72.

The hearing for this application follows an adjournment on May 16, 2022. I have previously adjudicated another application involving the same parties in which I cancelled two notices to end tenancy. No objections were raised by the parties with respect to my adjudicating this application.

R.T. appeared as the Tenant and was joined by her lawyer E.K.. M.M. appeared as the Landlord and was joined by L.Z. as her agent. The Landlord had the assistance of A.T. as her translator.

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. The Notice of Dispute Resolution and the initial evidence were acknowledged received by

both parties. I find that the Notice of Dispute Resolution and the initial evidence was served in accordance with the *Act*.

Preliminary Issue – Additional Evidence from the Parties

The Landlord advised that it served additional evidence by way of email sent on August 31, 2022. Tenant's counsel objected to the evidence on the basis that it was late. Rule 3.15 of the Rules of Procedure permits respondents to serve their evidence at least 7 days prior to the hearing. When advised of the Rule, Tenant's counsel withdrew her objection.

Despite her counsel's withdrawal of the objection, the Tenant continued to object, indicating that evidence is only received 3 days after it has been sent. The Tenant mentions the deemed receipt provisions, which for email is set out under s. 44 of the Regulations. However, the deeming provisions are only relevant if a party cannot or does not confirm receipt of the evidence. It is an evidentiary presumption, one that can be rebutted based on the circumstances. The Tenant confirmed she received the August 31, 2022 email on that date such that I need not apply the deemed receipt provision. I find that the Landlord's additional evidence was served in accordance with the *Act*.

I was further advised that the Tenant served response evidence on the Landlord after receiving the Landlord's additional evidence. Rule 3.14 of the Rules of Procedure permits applicants to serve additional evidence provided it is served at least 14 days prior to the hearing. In this case, the Tenant's additional evidence was not served within the proscribed time limits set by the Rules of Procedure. Tenant's counsel confirmed withdrawing the late evidence. I would further add that as the evidence was served late, I find that it would be procedurally unfair to include it and consider it. Accordingly, the late evidence from the Tenant is not included and shall not be considered by me.

Preliminary Issue – Tenants' Claim

The Tenants seek wide ranging relief in their application. During the hearing, the primary submissions pertained to a repair issue with the hot water system for the rental unit. Review of the application indicates that some of the relief claimed by the Tenants replicates itself within the description. For example, the Tenants' description of their claim under s. 65 that Landlord provide services states "provide access to the boiler room", which replicates the claim under s. 70 that the Landlord allow access to the unit.

Similar replications are made under the Tenants claim under s. 62 of the *Act* that the Landlord comply.

Given the Tenant's claims under ss. 62 (order that the Landlord comply) and 65 (that the Landlord provide services) are replicated elsewhere in the application, I dismiss these portions. There is little utility in making separate claims under different portions of the *Act* in which the same relief is claimed.

Issues to be Decided

- 1) Should the Landlord be ordered to undertake repairs?
- 2) Are the Tenants entitled to a monetary order?
- 3) Are the Tenants entitled to a rent reduction?
- 4) Should the Landlord be ordered to allow the Tenants access to the unit?
- 5) Are the Tenants entitled to the return of their filing fee?

Background and Evidence

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 confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on April 15, 2021.
- Rent of \$2,100.00 is due on the first day of each month.
- The Landlord holds a security deposit of \$1,050.00 in trust for Tenants.

A copy of the tenancy agreement was put into evidence by the Tenants. The rental unit is a basement suite in a single detached house in which the Landlord lives in the upper portion.

Tenant's counsel advised that there is an issue with the hot water system for the rental unit. I am told that the Tenants first notified the Landlord of the issue on December 2, 2021 and that a letter requesting the issue be repaired was sent to the Landlord on March 14, 2022. The Tenant's evidence includes a letter dated March 13, 2022 in which there is a request to repair the hot water system.

I was advised that the issue with the hot water is one where it is interrupted and requires the boiler to be reset by the Landlord to restore its normal function. The boiler is located within a utility room inside the Landlord's portion of the property. Tenant's counsel further advised that since December 2, 2021, there have been 26 instances in which the hot water to the rental unit was interrupted.

Neither the Tenant nor her counsel advised on the severity of the issue at the hearing. However, the Tenant's evidence includes photograph showing that during a service interruption in April 2022, she told the water temperature measured approximately 38 degrees Celsius.

The Landlord's agent testified that the Landlord has had two plumbers attend the property, the first in June 2021 and the second on April 2021, to assess the hot water system and was told that the issue is one in which there is insufficient natural gas service to the property. I am told that to repair the issue would require excavation, make the house unliveable during the work, and would cost a significant amount of money.

The Landlord's agent intimated that the issue is due to the Tenant's use of the system. I was advised that the previous tenants within the rental unit, which I am told was a family of four, had only handful of interruptions over the course of their two-year tenancy. The Tenant denied misuse of the hot water system.

Tenant's counsel argued that the Landlord has not been responsive in repairing the hot water system, focusing rather on ending the tenancy. I was further advised that the Landlord has been slower to reset the hot water system as the conflict between the parties has persisted.

The Landlord, through her interpreter, advised that she obtained a technician to assess the hot water system in April 2022 and that she did not do so sooner due to pandemic restrictions and a desire to avoid tradespeople from attending her home. The Landlord indicates that there were plans to undertake certain repairs at that time, but those plans were put on hold as her husband was going to live in Canada for a time and a 60-day notice to end tenancy was served instead.

The Tenants requests an order that the Landlord obtain a qualified professional to come assess the hot water system and undertake repairs as necessary. The Tenants also asks for access to the utility room located within the Landlord's portion of the property such that they can reset the system when there is an interruption in the service.

The Landlord argues that the cost of the repairs is disproportionate to the rental income generated from the Tenants. The Landlord further advised that her husband's income has been adversely affected by the pandemic. The Landlord testified to the difficulties with the Tenants, which she says has adversely impacted her mental health. The Landlord resists permitting the Tenants access to the utility room due to this conflict and further advised that the main house has a separate security system that would be triggered by the Tenants if they entered when the Landlord is not at home.

The Tenants also raises issue with heating within a room in the rental unit. I was told that the heating issue was first raised with the Landlord in October 2021. Tenant's counsel advised that the temperature in April 2022 was recorded as being at 17 and 20 degrees Celsius. The Landlord indicates that they had someone come into the rental unit at that time to assess the issue and that it was addressed. The Tenant argues that the Landlord obtained an electrician and that the heating is not an electrical issue as the heating comes from the boiler.

The Tenant indicates that there was water ingress into the living room of the rental unit in June 2021. It was argued that the damage was such that the Tenants could not use the space and that the damage was remedied in the same month such that the issue was resolved in 16 days. The Landlord argued that the Tenants could have accessed their own insurance to find alternate accommodations during the disruption.

I was further advised that there were issues respecting a drawer and door handle. The Tenants say that they notified the Landlord of the problem on February 9, 2022. The Landlord's agent argued that the Tenants caused the damage, which is denied by the Tenant.

The Tenant advised that she is seeking rent reduction as follows:

- Hot water disruptions: \$50.00 per month in past rent reduction from December 2021 to date; \$150.00 in future rent reduction until it is repaired.
- Heating for one room: \$50.00 per month for past rent reduction from October 2021 to date; \$150.00 in future rent reduction until it is repaired.
- Drawer/Door handle: \$50.00 per month for past rent reduction from February 2022 to date; \$150.00 in future rent reduction until they are repaired.
- Restricted access to the utility room: \$50.00 per month in past rent reduction from December 2021 to date; \$300.00 in future rent reduction until they are given access.
- Water Ingress June 2021: \$35.00 per day for 16 days affected, totalling a past rent reduction of \$560.00.

The Tenant further argued that the disruptions since the repair request was made in March 2022 has adversely affected the quiet enjoyment of her rental unit. I was advised that the Tenant seeks a reduction of rent by 20% beginning in March 2022 for the alleged breach of her quiet enjoyment by the Landlord. The Tenant did not provide specifics on how the Landlord breached her quiet enjoyment.

The Tenant also made submissions with respect to compensation for her time to prepare for this matter, which she estimated to take her 29.7 hours. The Tenant suggests that her time be compensated at minimum wage of \$15.65/hour, meaning total compensation for her time being \$464.80.

Analysis

The Tenants seek orders for repairs, rent reductions, monetary claim, and permitting them access to the utility room.

Section 30 of the *Act* protects a tenant's right to access the residential property, specifying that a landlord must not unreasonably restrict access to the residential property by the tenant of a rental unit that is part of the residential property or a person permitted onto the residential property by the tenant.

In this instance, there is no allegation that the Landlord is restricting access to the Tenants' rental unit or common areas. Rather, the Tenants seek an order that they be permitted to access a utility room, which both parties acknowledge is located within the Landlord's portion of the house. I find the Tenants claim in this regard to be impractical, unreasonable, and without merit. Claims of this nature are limited to circumstances in which a landlord has unreasonably restricted a tenant from accessing common areas or the rental unit itself. It does not permit tenants to access mechanical rooms, even when the services are shared. Further, it would be highly inappropriate for the Tenants to be given free access to the Landlord's living area so that they can reach the utility room. This portion of the Tenants claim is dismissed without leave to reapply.

Looking next at the request for repairs, s. 32(1) of the *Act* imposes an obligation on a landlord to maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and, having regard to the age, character, and location of the rental unit, make it suitable for occupation for a tenant. Policy Guideline #1, which provides guidance on the responsibilities of landlords and tenants, specifies that a landlord must continue to

provide a service or facilities that are essential to the tenant's use of the rental unit as a living accommodation.

Despite the volumes of evidence and submissions from the parties, there is little dispute that the hot water system is malfunctioning. The parties confirm that the hot water system needs to be reset, with the Landlord acknowledge having done so for the previous tenants and having needed to do so more frequently with the current Tenants. The Landlord admitted at the hearing that she had formulated a plan to address the issue in April 2022 but declined to do so as the Landlord chose to issue a 60-day notice to end tenancy as her husband would be living in Canada for some time.

The Landlord's admission is telling and confirms the Tenants' argument that Landlord tried to end the tenancy rather than repair the malfunctioning hot water system. This is highly inappropriate. I have little difficulty finding that Landlord's obligation under s. 32(1) extends to the provision of hot water. The Landlord cannot avoid this obligation by attempting to end the tenancy instead. I find that the Landlord has breached her obligation under s. 32 with respect to the hot water system. I order that Landlord retain a qualified professional to assess the hot water system and make whatever repairs are necessary.

I am told the repairs are costly. That is not a relevant consideration with respect to the issue. The Landlord's obligation to repair and maintain is not qualified by the cost associated with undertaking those repairs. Perhaps, there are less costly solutions. I do not know. That will be for the Landlord to determine after retaining qualified tradespeople to assist her in making that determination.

The Tenant alleges there is a heating issue in one of the rooms of the rental unit and suggested that this is tied to the issues with the hot water system. The Landlord denies that there is an issue at all. The Tenants evidence includes a screenshot of messages between the Tenant and the Landlord that appear to be from April 2022 in which the Tenant indicates that the room temperatures have "dropped to 20 now when its normally 25". Based on the evidence before me, it appears that the heating issues and the hot water issues are one and the same. Given that I have made an order regarding repair to the hot water system, I decline to make an additional order to repair the heating as that issue has been addressed.

Looking at the door handles and drawer, the parties again do not dispute that these are not in working order. The Landlord argues that the Tenants have misused these items such that they should be responsible for their repair. The Tenants deny this.

It should be noted that s. 32(3) of the *Act* requires tenants to repair damage they have caused. However, there is no evidence to support the Landlord's allegation, which is specifically denied by the Tenants. Further, the allegation appears to be directly contradicted by correspondence between the Tenants and the Landlord's agent from February 2022 which shows the request was made and that the agent was going to arrange for the issue to be addressed. It has not been repaired.

Policy Guideline #1 is clear a landlord is responsible for maintaining fixtures to the property placed there by them. Door handles and drawers are fixtures under law as they are subsumed and annexed to the realty. I find that the Landlord has failed to maintain and repair the handles and drawer. Accordingly, I order that these be repaired by the Landlord.

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.

In this instance, I have found the Landlord has breached her obligations under s. 32 with respect to the hot water system and the drawer and door handles. The Tenant suggests there be a past rent reduction of \$50.00 and \$150.00 in future rent reduction for each of these deficiencies. I do not agree with the Tenant that this an appropriate calculation for either item.

Looking first at the hot water system, it is worth considering the severity of the issue in the present dispute. The Tenant's own evidence shows that room temperatures have been down to 20 degrees Celsius. I am told it dropped to 17 degrees Celsius. I have been provided no submissions at the hearing on how frequently the heat was an issue in the rental unit. Other correspondence shows the Tenant putting a thermometer to the hot water and found it to be approximately 38 degrees Celsius. The hot water system has temporary interruptions, which are addressed when the system is reset by the Landlord.

I find that the extent of the issue has been overstated by the Tenants. Hot water at 38 degrees Celsius is certainly on the cooler side of hot, but it is not cold. Further, these interruptions are transitory and have been limited given the extent of time the issue has been reported by the Tenants. A room that is 20 degrees Celsius is practically room

temperature. I accept that 17 degrees Celsius is cool, but it is certainly not a situation where there is no heat at all. Again, these problems have not persisted for very long.

I find that the hot water disruptions have fortunately been transitory and brief and represent an inconvenience. Accordingly, I find that an appropriate figure for past reduction for both the hot water interruptions and the decreased heat within the rental unit to be \$50.00 per month. Given that the issue was first reported in December 2021, I find that the total past rent reduction claim to be \$500.00 (10 months x \$50.00). I would further order that the Tenants future rent be reduced by \$50.00 until such time as the hot water system has been repaired.

Dealing next with the drawer and handle, I was not advised on the extent of the issue. However, I would note that this is a minor problem and one that does not significantly affect the Tenants use of the rental unit as a living accommodation. Given the minor nature of the problem, I would grant the Tenants \$1.00 in past rent reduction for the Landlord's breach of her obligation to repair these items. As the issue was first reported in February 2022, I find that the total past rent reduction claim for this issue is \$8.00 (8 months x \$1.00). I would further order that the Tenants future rent be reduced by \$1.00 until such time as the drawer and handle have been repaired by the Landlord.

As I have found that the Tenants are not entitled to access the utility room within the Landlord's living space, I dismiss the Tenants claim for rent reduction for not being access to the utility room outright.

The Tenants seek a rent reduction for the loss of living space in June 2021 which lasted 16 days. The Landlord did not dispute that water entered the rental unit, that repairs were undertaken, or that the issue was addressed in 16 days. The Landlord instead argued that the Tenants could have lived elsewhere by using their insurance. The Landlord's argument is speculative and without merit. Given that it is undisputed that the living room was affected by water ingress and repaired within 16 days, I find that the Tenants lost the use of a portion of their living room during that time.

Again, the Tenants provide little evidence respecting the extent of the issue. I do not, however, accept their calculation for the loss of value to the tenancy being at \$35.00 per day over the 16 day period. I have reviewed the Tenants' evidence, which shows that a corner of the living room was affected, though the rest of the space is unaffected. To be certain, the repairs would have been disruptive. Given this, I find that an appropriate reduction would be \$200.00 given that only a small portion of the room was affected, and the issue was addressed within a short period of time.

Finally, the Tenant's claim a reduction in their rent by 20% from March 2022 to date due to a breach of their quiet enjoyment to the rental unit. There are several issues with the Tenants claim with respect to a breach of their quiet enjoyment. First, little in the way of specific submissions were made on what conduct by the Landlord constituted a breach of the Tenants quiet enjoyment. Second, at the hearing the Tenants submitted that this begin in March 2022, which coincides with the repair request. Presuming this portion of the claim is related to repair issues, the Tenants have been compensated as part of their rent reduction claim.

I find that it is inappropriate to claim rent reduction for loss of a service or facility and a rent reduction for breach of quiet enjoyment due to same malfunctioning hot water system. This amounts to double compensation for the same breach and runs contrary to the compensatory principle set out under s. 7 of the *Act*. I dismiss this portion of the claim.

The Tenants also seek a monetary order. Under 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.

The Tenant argued that she should be compensated for the time she spent preparing the application. I find that this is an inappropriate monetary claim. As often occurs, parties claim for costs related to preparing for a matter before the Residential Tenancy Branch. However, neither the *Act*, Regulations, Rules of Procedure, or the Policy Guidelines contemplate a party seeking or being able to obtain the costs associated with litigating their application except for the filing fee. I decline to grant the Tenants' claim for compensation of her time to prepare for the hearing.

Conclusion

I order that the Landlord undertake the following repairs:

- Retain a qualified tradesperson to assess the hot water system and make whatever repairs are necessary to remedy hot water to the rental unit; and
- Repair the drawer and door handle.

I order that the Tenants are entitled to a past rent reduction claim for the hot water disruption and heating in the amount of \$50.00 per month from December 2021 to date, totalling \$500.00. With respect to the door handle and drawer, I order that the Tenants are entitled to a past rent reduction claim of \$1.00 per month from February 2022 to date, totalling \$8.00. I further order that the Tenants are entitled to a rent reduction of \$200.00 due to the water ingress into the rental unit on June 2021.

I order that the Tenants future rent obligation be reduced by \$50.00 per month until the hot water system has been repaired. I further order that the Tenants future rent obligation be reduced by \$1.00 per month until the door handle and drawer are repaired.

I dismiss all other portions of the Tenants' claims without leave to reapply.

I find that the Tenants have had mixed success in their application. Despite this, I find they are entitled to the return of their filing fee. Accordingly, I order pursuant to s. 72(1) of the *Act* that the Landlord pay the Tenants filing fee. I direct pursuant to s. 72(2) of the *Act* that the Tenants withhold \$808.00 from rent on one occasion in full satisfaction of their past rent reduction claim and the return of their filing fee (\$500.00 + \$8.00 + \$200.00 + \$100.00).

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 14, 2022

Residential Tenancy Branch