



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, DRI-ARI-C, OLC, FFT

Introduction

On March 25, 2022, the Tenants made an Application for Dispute Resolution seeking to dispute a rent increase for capital expenditures pursuant to Section 43 of the *Residential Tenancy Act* (the “*Act*”), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was the final, reconvened hearing from the original Dispute Resolution hearing set for July 14, 2022. This hearing was adjourned as per my Interim Decision dated July 14, 2022. The final, reconvened hearing was then set down to be heard on December 5, 2022, at 9:30 AM.

Both Tenants attended the final, reconvened hearing. J.W. also attended the final, reconvened hearing as an agent for the owner of the rental unit. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

As noted in the Interim Decision, the Landlord did not ever apply to increase the rent for capital expenditures. As such, I have dismissed the Tenants’ claim for that issue in its

entirety. Furthermore, as the Tenants had given up vacant possession of the rental unit on April 15, 2022, an Order to comply is a moot point. As a result, the only matter for consideration was that of the Tenants' claim for monetary compensation.

Service of documents was discussed at the original hearing. As I was satisfied that all documentary evidence was served in accordance with the *Act* and the Rules of Procedure, I have accepted all evidence and will consider it when rendering this Decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 1, 2021, and that the tenancy ended on April 15, 2022, when the Tenants gave up vacant possession of the rental unit. Rent was established in the amount of \$2,700.00 per month and was due on the first day of each month. A security deposit of \$1,350.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

At the original hearing, the Tenants advised that they were seeking compensation in the amount of **\$48.53** because there were two floods in the rental unit, on February 23, 2022, and March 10, 2022, that were not caused by their negligence. The Landlord brought in fans and dehumidifiers, and these were in operation for 14 days straight, sometimes for 24 hours a day. As their tenancy agreement indicated that they were

responsible for the cost of hydro, they are looking to recover this from the Landlord. They cited the hydro bill submitted as documentary evidence to support this calculation.

J.W. confirmed that there were two floods in the rental unit that were not caused by the Tenants' negligence, but the repairs were covered by the Landlord's insurance. She noted that the Tenants should carry their own insurance. She confirmed that the restoration company brought in fans and dehumidifiers for at least one week, but she was not sure when these were brought in. As well, she did not dispute the Tenants' claim for damages.

The Tenants then advised that they were seeking compensation in the amount of **\$337.00** because Tenant R.L. was forced to sleep in the living room from February 28 to March 16, 2022, due to the flooding in the bedroom. There was a mildew and/or mold smell in the bedroom and the carpets were flipped up because the fans were drying them. As well, there were holes in the wall because drywall was removed, and the area was not clean enough to live in. They calculated this loss as approximately \$22.50 per day for 15 days, and they referenced documentary evidence submitted to support this claim.

J.W. reiterated that the Tenants should have had their own insurance. Other than that, she did not make any other submissions.

At the reconvened hearing, R.L. advised that they were seeking compensation in the amount of **\$180.00** because they lost the use of their living room from March 10 to 14, 2022, due to the second flood. Fans and dehumidifiers were again placed in the living room to dry the area, which made living in the rental unit "unbearable". He referenced documentary evidence submitted to support this claim, and noted that the amount of compensation was calculated as \$45.00 per day.

J.W. advised that the building had guest accommodation that the Tenants could rent if the bedroom was not suitable for occupation. She submitted that the Landlord's insurance would cover the cost of this guest accommodation. As well, she stated that other than the Tenants waking up due to the flood and the fans, there were no disturbances for the Tenants.

R.L. replied that they repeatedly asked the Landlord what steps would be taken to repair this damage, but J.W. would only continually refer to the Landlord's insurance. As well, the guest accommodation option was only mentioned after the repairs were completed.

R.L. advised that they were seeking compensation in the amount of **\$126.00** because of a loss of quiet enjoyment of rental unit for the 14 days that the fans and dehumidifiers were in operation. He submitted that there was a bad smell in the rental unit and the fans were hot. As a result, it was difficult to sleep or cook in the rental unit, and the windows needed to be opened to air it out, even though it was also cold outside. He referenced documentary evidence submitted to support this loss, and indicated that it was calculated as a loss of \$9.00 per day.

J.W. did not make any submissions with respect to this issue.

Finally, R.L. advised that they were seeking compensation in the amount of **\$270.00** because since the first flood of February 23, 2022, to the time that they gave up vacant possession of the rental unit, the carpets were pulled up, there was drywall missing, a closet door was also missing, and some shelves were not replaced. He indicated that their calculated loss was \$9.00 per day from March 16, 2022, to April 15, 2022.

J.W. advised that the Tenants have duplicated their claims, and that they are not consistent. She reiterated that the Tenants could have used the guest accommodation in the building, but she was not certain of when she informed the Tenants of this. She submitted that the Landlord was in constant communication with the restoration company, the strata, and the insurance company, and that the fans were only in the rental unit for two to three days. She testified that the Tenants never brought up any concerns with their loss, that R.L.'s bed was not moved from the bedroom, and that it was only his personal items that were moved.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 28 of the *Act* pertains to the Tenants' right to quiet enjoyment of the rental unit and notes that the Tenants are entitled 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 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

Section 32 of the Act outlines the Landlord and Tenants' obligations to repair and maintain the rental unit and states that:

- (1) 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 a tenant.**
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*
- (4) A tenant is not required to make repairs for reasonable wear and tear.*
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*

Section 67 of the Act allows a Monetary Order to be awarded for damage or loss when a party does not comply with the Act.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also need to turn to a determination of credibility. I have considered the parties'

testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Tenants' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenants prove the amount of or value of the damage or loss?
- Did the Tenants act reasonably to minimize that damage or loss?

Regarding the Tenants' claim for compensation in the amount of \$48.53, the consistent and undisputed evidence is that there were two floods in the rental unit that were not caused by the Tenants' negligence. Moreover, given that J.W. provided inconsistent testimony during the hearings regarding the length of time that the fans and dehumidifiers were in the rental unit, I prefer the Tenants' testimony and documentary evidence. As such, I find that the Tenants have sufficiently corroborated their claim of loss, and I grant the Tenants a monetary award in the amount of **\$48.53** to satisfy this debt.

With respect to the Tenants' claim for compensation in the amount of \$337.00 because of R.L.'s loss of use of the bedroom from February 28 to March 16, 2022, I note that there is no dispute that there were two floods in the rental unit and that one affected the use of the bedroom. While J.W. continued to infer that the Tenants should have had insurance, I note that this type of insurance generally only covers loss of contents and property. As these floods were not due to any fault of the Tenants, the Landlord is required to complete the necessary repairs and possibly compensate the Tenants for

any loss that they suffered. Given this, I accept that the Tenants' claim of loss was corroborated by their evidence and was commensurate with the amount that they were seeking. As such, I grant the Tenants a monetary award in the amount of **\$337.00** to rectify this issue.

Regarding the Tenants' claim for compensation in the amount of \$180.00 for the loss of use of their living room for 4 days, there is no dispute that there was a flood that affected the Tenants' use of the living room. I do not find that there is any evidence that J.W. offered the Tenants use of a guest accommodation in the building, and I place little weight on her subjective perspective on any disruption or disturbance the fans and dehumidifiers caused as she did not have to live through these events. I find it more likely than not that having fans and dehumidifiers in the rental unit, that were operating constantly to remedy situations that the Tenants were not responsible for, would constitute a significant disturbance. As such, I grant the Tenants a monetary award in the amount of **\$180.00** to resolve this claim.

With respect to the Tenants' claim in the amount of \$126.00, as J.W. did not make any submissions with respect to this issue, I grant the Tenants a monetary award in the amount of **\$126.00** to satisfy this claim.

Finally, regarding the Tenants' claim for compensation in the amount of \$270.00, I do not find that this is a duplication of their loss as the claim pertained to issues that they continued to suffer from after the second flood and until the time they gave up vacant possession of the rental unit. However, I find that the Tenants have submitted no documentary evidence to corroborate their testimony of loss over this period of time. As such, I dismiss this claim in its entirety.

As the Tenants were partially successful in this Application, I find that they are entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Item	Amount
Additional Utilities	\$48.53
Loss of bedroom	\$337.00

Loss of living room	\$180.00
Loss of quiet enjoyment	\$126.00
Recovery of filing fee	\$100.00
Total Monetary Award	\$791.53

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$791.53** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in 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: December 13, 2022

Residential Tenancy Branch