



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, LRE, OLC, FFT, MNDCT

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$6,859 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

This matter was reconvened from a prior hearing on September 29, 2022. I issued an interim decision setting out the reasons for the adjournment on that same day (the "**Interim Decision**"). This decision should be read in conjunction with the Interim Decision.

The tenants attended the hearing. The landlord attended the hearing and was assisted by her son ("**IG**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing, the tenants confirmed they could now view the video file which I ordered the landlord re-serve following the prior hearing. Accordingly, I admit this video file into evidence.

Additionally, the tenants advised me that they received a bill credit of \$677.60 on their mobile phone bill, so they are no longer seeking to recover this amount from the landlord. Accordingly, I amend the application to reduce the amount of the monetary order sought.

Issues to be Decided

Are the tenants entitled to:

- 1) a monetary order of \$6,181.40; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The rental unit is located on the lower level of a single-detached home. There is a second unit on this level occupied by a person who is not a party to this application. The landlord lives on the upper floor. The parties entered into an oral tenancy agreement starting March 2020. At the hearing, the parties disagreed about how much monthly rent was supposed to be. The landlord stated that it was \$1,000, but that the tenants only paid \$950. The tenants stated that the landlord initially asked for \$1,000 but agreed to reduce it to \$950. The parties agree that the tenants paid the landlord a security deposit of \$500, which the landlord has returned to the tenants.

The parties did not conduct a move-in or a move-out condition inspection report.

The tenants testified that on January 1, 2022, the landlord raised rent to \$1,025, which they verbally agreed to out of ignorance of the restrictions on rent increases. The tenants testified that when they discovered the landlord was not permitted to increase their monthly rent by this amount, they retroactively deducted \$375 from June's rent and only paid \$575 (\$950 - \$375).

The landlord agreed that the tenants paid \$575 for June's rent.

The tenants testified that Wi-Fi internet was included in the monthly rent. In support of this, they submitted a text message exchange wherein tenant PD asked the landlord for the Wi-Fi password on March 5, 2020 and the landlord provided it to her on March 7, 2020. The tenants testified that the landlord never changed the Wi-Fi password and that they used the landlord's Wi-Fi until June 2, 2022, when the landlord changed it and refused to give them a new one.

The landlord testified that she gave the tenants the Wi-Fi password on a "one-time basis" so that the tenants could use it as they got settled into the rental unit. She testified that she changed the password on more than one occasion during the tenancy and that the tenants never asked her for a new password. She stated that the rental unit is not wired to allow it to have independent internet access, and that she assumed that the tenants were using their mobile phones' data plan for their internet usage throughout the tenancy.

The tenants testified that after the landlord changed the Wi-Fi password, they contacted her asking for the new one, but received no reply. They then called Shaw to see if they could get internet service activated at the rental unit. They were advised that alterations needed to be made to the cable box to enable this. A technician attended the rental unit on June 7, 2022, but the landlord prevented the technician from touching the cable box. The tenants submitted a video of this.

In order to maintain internet access in June 2022, the tenants used their mobile phones' data. PD testified that she had a company phone and did not know how much data was on her plan. She testified that her employer received a bill from Bell Mobility for \$1,540 on June 2, 2022, which the tenants paid. As stated above, the \$677.60 of this amount was credited back. The tenants seek compensation for the difference (\$862.40), as they argue they would not have incurred this cost had the landlord not changed the Wi-Fi password and refused to give them a new one.

For comparison, the tenants submitted PD's mobile phone bills from February, March, April, and May 2022, which indicated totals owed of \$53.76, \$53.76, \$54.42, and \$91.84 owing respectively.

I note that on their monetary order worksheet, the tenants have claimed \$1,632 in loss caused by the lack of WiFi, which I understand to have been calculated by adding the May bill (\$91.84) to the June bill (\$1,540). However, the tenants did not explain why they should be entitled to recover the cost of the May bill, if the WiFi was not cut off until June 2, 2022.

The tenants also seek compensation for lack of heat in the bedroom of the rental unit. The tenants testified that the landlord never advised him that there was no heat in the bedroom. They testified that the landlord provided them with a small heater at the start of the tenancy, but that it didn't work properly. They argued that they should be entitled to a retroactive rent reduction of \$100 per month for each month of the year they would have had the heat on (6 months of the year). In total, the seek \$1,200 in compensation for the time they spent without adequate heat in the bedroom.

The landlord stated that the tenants never complained about the lack of heat in the bedroom. She believed that the space heater she provided was sufficient to warm the bedroom.

The tenants argued that the landlord failed to maintain the rental unit during the tenancy. They stated that when they moved into the rental unit, one of the closets did not have a door. They asked landlord to install one, for safety reasons, as they had small child. They stated that the landlord agreed to do this. However, after three or four months, they stated that the landlord told them that it was too difficult for her to do. The tenants asked their cousin to come to the rental unit to install the closet door. They are seeking \$27 for the parts that have to purchase to enable this installation (the landlord made the door itself available to them).

The tenants testified that near the start of the tenancy one of the kitchen cabinets fell on their son. They stated that the door to the cabinet was not properly attached to the body, and it came off. The tenants asked the landlord to fix this, and they say the landlord agreed but never completed the repair.

The tenants also stated that the bathroom sink was not properly sealed or affixed to the vanity and that the landlord did not repair this despite their requests. The tenants submitted photographs of the kitchen cabinet and the bathroom sink and supportive solutions.

Tenants also testified that the sliding glass door in the bathroom shower is not properly secured and that it tilted inward, posing a danger to those using the shower. When they asked for it to be repaired the landlord did not fix it, rather they say the landlord simply removed one of the two sliding glass doors. They submitted a photo of the door showing that it would tilt inwards.

Finally, the tenants allege that for six months the outside gate latch for the front of the house to the backyard is broken and does not lock from the top. They claim that this is a safety concern.

The tenants seek a cumulative amount of \$1,000 in compensation for the landlord not making necessary repairs to the rental unit. They were unable to articulate how they arrived at this amount of compensation.

The landlord denied that the tenants ever asked her to do any repairs in the rental unit. She testified that the rental unit was "in perfect condition" at the start of the tenancy, although she conceded the closet did not have a door, but rather had a sheet across the entry.

The tenants also seek compensation of \$3,000 for their loss of quiet enjoyment for the last three months of the tenancy.

The tenants stated that PD's nephew came to live with them at the end of March 2022. When the landlord learned this, they say that she demanded an additional \$300 in monthly rent. The tenants did not agree to this increase. They testified that this caused the landlord's husband to become angry with the tenants, and that he began acting aggressively towards them. They testified that on multiple occasions he shouted at them and their child when they were in the backyard.

On May 11, 2022, the landlord's husband confronted PD on the back patio, acted aggressively towards her, and attempted to enter the rental unit. The tenants submitted a video of this, taken by PD which shows the landlord's husband in the threshold of the rental unit and the landlord pulling him back by the shirt. The landlord and another individual (the occupant of the other ground floor unit) escort the landlord's husband around the side of the house, calming him down. PD testified this confrontation was caused because she told him that she had emailed the RTB about the rent increase and was told that she was not responsible for paying it. Both of the tenants' children witnessed this event, and the younger child is now scared whenever someone knocks at the door.

This altercation was the only major disruption described by the tenants, but the tenants stated that, in addition to the yelling, the landlord and her husband were rude to them periodically for the months of April, May, and June, 2022. They seek compensation of \$1,000 for each month this conduct occurred (\$3,000 total).

The landlord remembered May 11, 2022 differently. She testified her husband was in the backyard to get to the landlord's storage (located on the lower level of the house). He noted that the tenants had left many of their belongs in the backyard. He saw PD sitting in the window and he pointed at her and then at the items to indicate that she should clean them up. The landlord testified that PD then came out of the rental unit and got angry and started yelling at her husband. She testified that she intervened to protect her husband.

The landlord denied harassing the tenants about an increase in rent. She testified that she was unhappy that PD's nephew moved in with the tenants, as this would cause the utilities bill to go up (utilities are included in the tenants' rent). She testified that she wanted an additional \$250 or \$300 in rent and asked the tenants to pay "anything you can give me". She testified that she only asked them once. However, she also testified that she told the tenants "you pay me or you can move".

Analysis

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

(the "**Four-Part Test**")

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, in order to be successful, the tenants must prove it is more likely than not that the landlord breached the Act or tenancy agreement, that they suffered a quantifiable loss as a result of the breach, and that they acted reasonably to minimize the loss.

The tenants claim compensation as follows:

Description	Total
Loss of WiFi	\$954.24
Inadequate heat in bedroom	\$1,200.00
Inadequate repairs	\$1,000.00
Cost of installing closet door	\$27.00
Loss of quiet enjoyment	\$3,000.00
Total	\$6,181.24

I will address each in turn.

1. Loss of WiFi

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v Chorny* (1952), 2 DLR 354 (BCCA), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

The tenants testified that WiFi was included in the monthly rent. In support of this, they provided a text message exchange wherein the landlord gives them the WiFi password. They testified that the landlord did not change the password until the relationship between the parties began to break down over the issue of an improper rent increase,

which was no doubt exacerbated by the PD's nephew moving in with the tenants and the associated costs (real or perceived) that the landlord thought this was causing her.

The landlord testified that the provision of the WiFi password was a one-time only accommodation and that they changed the password several times throughout the tenancy without objection.

I find that the landlord's testimony is not in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances. The parties agree that the rental unit is not capable of getting internet access directly (which is why the Shaw agent attended the residential property). The landlord's assumption that the tenants used their mobile data for internet access is not in accord with the facts of the case. If this were the case, I cannot see why the tenants would have attempted to get internet installed in the rental unit at the beginning of June 2022. I would have expected them to do this much earlier in the tenancy. Additionally, if they were using their mobile data throughout the tenancy, I would not have expected the PD's June mobile bill to be as high as it was; rather I would expect it to be in line with the previous bills.

Where the testimony of the landlord and the tenants differ, I accept the testimony of the landlord over that of the tenants.

As such, I find that the provision of WiFi to the tenants was a term of the oral tenancy agreement. I find that by changing the password and not providing it to the tenants, the landlord breached the tenancy agreement.

As a result of this breach, which the parties agree occurred on June 2, 2022, the tenants were without internet access in the rental unit and that PD used her mobile phone's data to meet their internet needs for the month.

I also accept that PD's phone was provided to her by her employer, and that she did not know the details of the data plan (including data limits). In June 2022, her account was billed \$862.40 (after the credit). She paid her employer this amount. I find that she suffered this loss as a result of not having WiFi access in the rental unit. I do not accept that she suffered any loss in May 2022 as a result of this breach, as the WiFi password had not been changed at that time.

However, I do not find that the tenants acted reasonably to minimize their loss. I find that the tenants reasonably should have inquired as to PD's mobility plan's data limits, and modified her plan to accommodate the increased usage (which was reasonably foreseeable). Additionally, the tenants could have reduced their data usage or spread the usage between PD's and AD's phones (which may have had room left under the data cap).

In the circumstances, I find that even if the tenants took these steps, they still would have suffered some financial loss (time spent dealing with the cellular providers and increased monthly fee). I find that \$400 is appropriate compensation for this loss and the inconvenience caused by the landlord's breach of the tenancy agreement. I order her to pay the tenants this amount.

2. Loss of Quiet Enjoyment

Having reviewed the video footage submitted into evidence by the tenants of the May 11, 2022 incident, I do not find the landlord's testimony that she intervened in the situation to protect her husband to be credible. The video footage shows the landlord's husband approaching PD and the landlord pulling her husband away. She is preventing her husband from entering the rental unit and getting closer to PD. This is not consistent with her husband needing protection from PD.

As such, and as I have already found the tenants' evidence to be more credible than the landlord's on another issue, I accept the tenants' version of the events of May 11, 2022, and of the landlord and her husband's conduct more generally.

I find that by acting aggressively towards PD on May 11, 2022 and by shouting at the tenants and their children, the tenants were deprived of their right to quiet enjoyment. I also find that the landlord put improper pressure on them to increase the monthly rent when PD's nephew moved in. The landlord's own testimony framed her approach to the tenant as an ultimatum, that they could either agree to an increase in rent or move out. Absent an explicit term in the tenancy (per section 40 of the Act), the Act does not permit the landlord to impose a rent increase for an additional occupant. There is no evidence before me to suggest that such a term existed.

Section 12 of the Act states that any oral tenancy agreement has the "standard terms" and the *Residential Tenancy Regulation* sets out these terms, which include:

Occupants and guests

9(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

I cannot say if the presence of PD's nephew caused there to be an "unreasonable" number of occupants. But if it did, the landlord's recourse was to issue a Notice to End Tenancy and make an application to the RTB, not demand a rent increase.

I find that conduct of the landlord and her husband deprived the tenants of the quiet enjoyment of the tenant unit they were entitled to. They suffered inappropriate stress as a result of the demand to increase rent and lost literal quiet enjoyment as a result of being yelled at.

I do not find, however, that this loss of enjoyment warrant an award of \$1,000 per month (more than the amount of rent they were paying per month). Rather, I find that the stress caused by the landlord's improper request for a rent increase and her husband's yelling warrants a 20% reduction in rent for the months of April, May, and June 2022 ($950 \times 20\% = \$190$; $\$190 \times 3 = \570). Additionally, I find that the May 11, 2022 incident warrants a further \$100 reduction of May's rent. In total, I order the landlord to pay the tenants \$670 for their loss of enjoyment.

3. Lack of heat in the bedroom

I do not find that the tenants have provided sufficient evidence to establish that they were without heat in the bedroom for the duration of the tenancy. Based on the testimony of the parties, I accept that the central heating system of the house did not heat the bedroom and that landlord provided the tenants with a space heater to heat the room. I do not have any evidence to support the tenants' assertion that the space heater was inadequate, or non-functional. Such evidence should have been relatively easy to provide (text messages or other communication between the parties regarding the issue, for example). Without such evidence, I do not find that the tenants discharged their evidentiary burden.

As such, I decline to award the tenants any amount for this part of their claim.

4. Repairs and closet hardware costs

I find the tenants' evidence regarding the condition of the rental unit more credible than the landlord's evidence. I accept that the rental unit was in the condition depicted in the photographs. I do not accept the landlord's evidence that the rental unit was "in perfect condition" at the start of the tenancy. No move-in condition inspection report was conducted to corroborate this assertion, and the nature of some of the damage (the sink in particular) is not consistent with misuse by the tenants.

Section 32 of the Act states:

Landlord and tenant obligations to repair and maintain

32(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.

[...]

(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.

Based on the photographs submitted into evidence, I find that the damage to the cabinet door, the sliding glass shower door, the outside gate, and the kitchen sink amount to damaged items that the landlord ought to have repaired with regard to the age and character of the rental unit. I accept that the landlord did not repair these or delayed in repairing them as indicated by the tenants.

However, I do not find that the lack of a closet door amounts to a deficiency in need of a repair. Rather, the installation of the door amounts to an upgrade. The closet was functional without a door and it is not uncommon for closets or pantries not to have doors or to have curtains instead of doors. I accept the landlord's undisputed testimony that the closet had a sheet in place of a door at the start of the tenancy. The tenants are not entitled to any compensation for a lack of closet door or to recover the cost of the hardware they purchased to install a new door.

The tenants seek \$1,000 in compensation for the landlord's failure to make repairs. The tenants were unable provide a basis on which this amount was calculated.

I accept that the landlord breached the Act, but I cannot say if the tenants suffered any monetary loss as a result of the breach, or if they did (a diminished ability to use elements of the rental unit, for example), I cannot say how much a loss they suffered. In the circumstances, I find that nominal damages of \$100 are appropriate.

Pursuant to section 72(1) of the Act, as the tenants have been partially successful in the application, they may recover the filing fee from the landlord.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the landlord pay the tenants \$1,170, representing the following:

Description	Fortis
Loss of WiFi	\$400.00
Loss of quiet enjoyment	\$670.00
Inadequate repairs (nominal)	\$100.00
Filing fee	\$100.00
Total	\$1,270.00

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: December 7, 2022

Residential Tenancy Branch