Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RHOME PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR, OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the "Application") on June 29, 2022 seeking:

- compensation for monetary loss/other money owed;
- a reduction in rent for repairs agreed upon but not provide;
- the Landlord's compliance with the legislation and/or tenancy agreement;
- reimbursement of the Application filing fee.

The matter proceeded by way of a hearing on November 7, 2022, pursuant to s. 74(2) of the Residential Tenancy Act (the "*Act*"). The Tenant and the Landlord attended the hearing, and I provided each with the opportunity to present oral testimony that was recorded as evidence. In the conference call hearing, I explained the process and provided each party the opportunity to ask questions.

At the outset of the hearing, the Landlord confirmed they received the Notice of Dispute Resolution Proceeding (the "Notice") and the prepared documentary evidence of the Tenant. The Landlord also confirmed they provided no documents as evidence for this hearing, stating they did so in a prior application brought by the Tenant.

Preliminary Matter – correct Landlord name

As per the tenancy agreement that the Tenant submitted as evidence, and with reference to the earlier dispute resolution hearing between these parties, I have amended the Landlord's name on the front cover sheet of this decision.

Issues to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord obligated to comply with the legislation and/or the tenancy agreement?

Is the Tenant entitled to a rent reduction for repairs agreed upon but not provided?

Is the Tenant entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant provided a copy of the tenancy agreement in their evidence. Both parties signed the agreement on October 21, 2021. The rent amount was set at $2,750, and the Tenant paid a security deposit of $1,375.

The Applicant in this hearing – the Tenant SL – stated they live in the basement portion of the listed rental unit, which is an entire house. They other family members are co-Tenants as listed on the tenancy agreement, and those other family members occupy the upper portion of the rental unit house.

In their evidence, the Tenant highlighted the portion of the agreement specific to repairs, worded thus:

> The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law. If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the Act seeking an order of the director for the completion and costs of the repair.

The Tenant set out that they had a prior hearing concerning this tenancy with the Landlord, with the decision of another arbitrator completed on June 15, 2022. They stated they made this present Application two weeks after that previous decision. That Arbitrator specifically ordered the Landlord to hire a professional to investigate/assess a previously flooded area of the rental unit, then have repairs commence, to be completed in “a reasonable period of time after the work commences.”

The Tenant described the flood that occurred after they moved into the rental unit at the beginning of November 2021. As stated in their Application, this was the second day of the tenancy. This resulted in their stay in a hotel for 2 weeks.

According to the Tenant, a restoration company entered the rental unit; however, this company was "fired" by the Landlord when they made the Landlord aware that the Landlord was required to check for asbestos. The restoration company made the recommendation for a mould test, apparently because of the amount of water that came from the washing machine that was the source of the flood.

The Landlord installed fans to dissipate the moisture, and then left. In the Tenant's version, these fans remained in the rental unit for two weeks. This was not according to the Tenant a process involving "a professional and monitored drying process, testing for mold, etc." and put their own health at risk.

The Tenant also described a pre-existing mould issue in the rental unit. They also listed other problems in the rental unit requiring repair.

The prior Arbitrator ordered a professional to investigate/assess the problematic area in the rental unit; this was "the area that was affected by the flood". The Tenant described the first visit from this professional happening on July 16, 2022. That professional recommended a mould specialist's assessment, only confirming from their visit the presence of mould on drywall within the rental unit. The Tenant submitted in this present hearing that since that visit there were no other visits for this same purpose, and they have heard nothing further about this.

Additionally, in that decision the Arbitrator added: "should the qualified professional determine that an asbestos test is necessary as a part of the required remediation or repairs, the Tenants may withhold the cost of the tests already paid for from the next month's rent."

In response to the Tenant's description and emphasis on the need for proper mould inspection, the Landlord confirmed that they had a professional inspect the rental unit. The Landlord obtained a written report from that inspection in July, and that report did not specify the presence of mould, with "no noticeable mould found" and a 50% reading for moisture, with a mould growth threshold norm being greater than 60%.

The Landlord also shared their understanding that the prior Arbitrator did not specifically order a mould inspection/analysis by a mould specialist. Though the professional they hired for July

26 did recommend a mould specialist to attend, the Landlord did not retain or arrange for a mould specialist just yet.

The Tenant also raised other issues, what they described as “a whole array of problems in the unit”. They listed broken deck stairs, deck flooding and floor rotting, a broken fence & gate, and faulty lighting in the garage. In their evidence they provided a list of issues as “negligent conditions”, along with the time that it took the Landlord to either fix each issue, or if the issue remained unresolved. These are:

1. 1 day before move in date landlord announces garage door was broken (was originally told it would take weeks to repair) I told landlord he would be billed for extra moving costs if door wasn’t opened -door was repaired next morning (move in day)
2. 1 month 3 days (after heavy rain and flooding in garage)
3. roof gutters cleaned, but not repaired (2 months+)
4. 1 month 8 days without properly functioning cold water upstairs bathroom sink (only scalding hot water) health hazard to upstairs tenants, especially 3-year-old
5. 1 month 9 days until furnace vents cleaned
6. 1 month 13 days fridge leak upstairs
7. 1 month 13 days to repair dryer hose downstairs (landlord promised it would be done before move in date)
8. 1 month 22 days without upstairs freezer (landlord promised it would be there before move in date)
9. 2 months & 21 days to repair roof gutters (after major rainfalls)
10. 2 months & 21 days to inspect chimney opening
11. 5 months+ no mold testing done
12. 5 months +no back door key
13. 5 months+ front and back door locks not changed
14. 5 months + till electrical outlet in garage (after hearing)
15. 5 months+ till downstairs hanging fixture repaired (landlord promised it would be done before move in date)
16. 5 months+ no heat vent in second downstairs bedroom
17. 5 months+ no opening window bars downstairs (safety hazard)
18. 5 months+ till back fence repaired. Son built new gate
19. 5 months+ unsightly 4-wheeler and tires still in yard (landlord promised they would be gone before move in date)

The Tenant also provided a copy of their November 7, 2021 repair and maintenance request list, crafted as their written request to the Landlord for all repairs required within the rental unit at the start of the tenancy. The Tenant provided photos depicting separate areas of concern in the rental unit, and other correspondence to the Landlord or their agents concerning repairs.

In response to this evidence and the Tenant’s description of ongoing issues in the hearing, the Landlord acknowledged that repairs were needed in the rental unit, and that there were maintenance or repair issues that had as yet remained unresolved. They noted April 2022 repairs to the fence and repairs to secure the deck, and the removal of trees more recently on

October 16. They pointed to a list of repairs completed before the previous hearing in May; however, they did not provide this list in their evidence. They stated these repairs cost the Landlord over $10,000 within the last year.

The Landlord noted specifically with regard to the allegedly ongoing repair issues that they have difficulty retaining contractors to come in to the rental unit and this leads to delays. They cited the example of replacing the Tenant's freezer that was delayed due to supply and labour issues in late 2021.

The Tenant submitted a Monetary Order Worksheet they completed on June 22, 2022, outlining their claim as follows:

#	Items	$ claim
1	loss of rental unit for 2 weeks in November – downstairs suite flood	1,375.00
2	loss of quiet enjoyment throughout rental unit – fan operation	1,375.00
3	loss of services/facilities – lack of hot water upstairs	1,000.00
4	roof gutter flood & garage repair – garage flooding	90.00
5	broken back fence & gate – rotted deck rails & panels	120.00
6	garage lighting & electrical – supplies & labour	165.00
7	furnace vent cleaning – furnace filters	49.00
8	garbage disposal & heavy cleaning – indoor & outdoor storage	526.00
9	asbestos testing – because of flood	250.00
10	electrical usage – November 1 – 15th – fans running	50.00
	Total	**5,000.00**

I reviewed these individual pieces of the claim in detail with the parties in the hearing. The Tenant presented their invoices, their photos, and gave a description of their rationale for claiming these amounts from the Landlord. The Landlord responded to individual points raised by the Tenant.

1 The Tenant claims 2 weeks' rent amount for loss of use of the rental unit at the start of the tenancy, from approximately November 1 to November 15. This was allegedly the time that the Tenant stayed out from the rental unit in a motel. They presented hotel receipts that show their stay from November 5, 2021 to November 11, 2021.

2 The Tenant also claimed for the loss of quiet enjoyment during this timeframe, due to the constant fan interruption where the Landlord set up fans to dissipate the moisture left from the flood. This was for the whole of the rental unit house.

On both of these points, the Landlord responded to say the flood in question only affected the basement portion of the rental unit house. In the Landlord's estimation, the main Tenant Applicant SL could have resided upstairs with the other Tenants during this time.

3 The Tenant described not having hot water in the bathroom upstairs, and if used, water would have sprayed everywhere. They submit that they mentioned this repeatedly to the Landlord, and it took months for the Landlord to change the faucets in that bathroom. As set out in their list describing ongoing needs for repair, this timeframe was "1 month 8 days without properly functioning cold water upstairs bathroom sink (only scalding hot water)". In the hearing they noted the December 8 repair date for this particular item.

4 The Tenant on their own had to buy cement and fix wall cracks in the garage. They provided pictures showing these cracks as well as what they described as flooding coming under the garage doors because of this problem. They repeated their request to the Landlord on this, and only after 1 month and 3 days did the Landlord clean the gutters but did not reconnect eavestrough tubes as required. The Tenant submitted this took place eventually after 2 months and 21 days.

5 The Tenant provided that they purchased wood to make repairs to the gate, making it again able to be locked. They submitted this was near the start of the tenancy, "around March or April." On their worksheet listing timelines for repairs, they provided for "5 months+ till back fence repairs. Son built new gate."

The Tenant stated in the hearing that they provided receipts for these amounts listed for these fence and gate repairs.

The Landlord responded to items 3, 4 and 5 to state that they addressed these items and made repairs "along the way". They acknowledged it took some time to fix the downstairs area due to the flooding, and "it was fixed after everything else happened."

6 The Tenant presented that they had to purchase lighting for the garage because of inadequate or no lighting in the garage. They submitted a document listing dates and details for an amount of a purchase on November 13, 2021 in the amount of $135.50. Concerning a particular outlet in the garage, the Tenant inquired to the Landlord. In the Tenant's evidence is an email from the Landlord on December 1 stating they forwarded the Tenant's contact information to a technician. The Tenant included an image of the outlet, which appears to be exterior to the garage.

In a copy of messaging to the Landlord on November 5, the Tenant noted “there’s still no light though [in the garage]. I’m going to buy an overhead light . . .and install it. They are 50% off right now.”

The Landlord stated this flaw was noted on their initial walkthrough meeting with the Tenant. This was “not an easy job to fix that fixture.”

7 The Tenant provided an image of the furnace filter that they assert had not been replaced for quite some time. They had “never seen a furnace filter that filthy”. This left them coughing on the first night or two they stayed at the rental unit. They included an email message, undated, in which they informed the Landlord that they had to replace the air filter, stating: “I will include the receipt for those in a later email.”

The Tenant also noted that there was a walkthrough with the Landlord at the start of the tenancy; however, that revealed only a couple of items of concern at the start of the tenancy. There was “a whole list of things discussed” and the Landlord assured them “no problem” that items of concern would be addressed.

The Landlord stated this was unforeseen. In the hearing they acknowledge this unnecessary expense to the Tenant.

8 The Tenant discovered garbage under the rental unit. They described this as “heavy duty cleaning in storage unit under stairs – hanging insulation, cobwebs, dead bugs, filth, etc.” in their November 7 note to the Landlord. Their work in this area to clean it up required a hazmat suit. The Tenant provided a receipt for the amount of $15 dated November 23, 2021 from the local waste disposal site.

On this individual point, the Landlord noted that the previous Tenant left a lot of items in the house, so some of those items were left in the storage space. They stated they were not aware of what items were considered to be “garbage” requiring a transfer of those items to the local dump.

9 The Tenant pointed to the previous Arbitrator’s decision where that Arbitrator noted that no monitoring of the asbestos issue had been done by the Landlord previously. The Tenant paid $250 fort this asbestos test that “needed to happen.” They provided an invoice showing payment on November 8, 2021, for the analysis that took place on that same date. This was the amount $141.75.

A second invoice dated December 7, 2021 shows the Tenant's payment of $47.25 for another submitted test sample, taken to the laboratory facility by the Tenant on that date. Their correspondence with the Tenant on November 4 (submitted by the Tenant) shows they were only advised about the need for asbestos testing when walls are opened in the rental unit interior, and work at that point to release moisture was only occurring on the outside.

On this particular listed expense, the Landlord noted this was not necessary. They were told by the initial restoration team that asbestos testing was "only needed when walls open up". In this situation, there were no walls opened for further work; therefore, this test was not necessary.

10 The Tenant presented that the fans installed by the Landlord drew a lot of power during that relatively short time they were in place. They propose $50 as a reasonable amount of compensation given the impact on the utility bill that they paid. They presented a copy of their utility bill for electricity consumption in the period from October 28, 2021 to December 20, 2021.

In response, the Landlord noted this was necessary and reasonable.

On their Application, the Tenant also applied for a rent reduction, giving the amount of $2,750. They completed the Application by stating: "We want rent reduction until landlord complies with Order made on June 15th 2022. For an issue ongoing since moving in on Nov. 1, 2021.

The Tenant also seeks the Landlord's compliance with the *Act*, the *Residential Tenancy Regulation*, and/or the tenancy agreement. This was with reference to the prior Arbitrator decision of June 15, 2022: "Landlords have not complied with order by arbitrator after hearing on May 24th 2022."

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss.

While the party who does not comply with the tenancy agreement/legislation must compensate the other, by s. 7(2) the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party, only if I identify palpable damage or loss, and a definitive breach.

To be successful in a claim for compensation for damage or loss the Applicant – here, the Tenant -- has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I have considered the Tenant's Application for each of the line items in their Monetary Order dated June 22, 2022. I note the Tenant created this Monetary Order worksheet one week after the previous Arbitrator's decision of June 15, 2022. I find this indicates no steps taken to mitigate the loss to them at that time. At that time, I find the Landlord had not undertaken to hire a qualified professional to investigate the flood area, and there was no recommendation or assessment from a qualified professional at that time. Certainly, no repairs associated with any finding from a professional assessment had not started at that time.

For each of the line items in their Monetary Order Worksheet, I find as follows:

1 The Tenant presented receipts from a stay in other accommodation for the period from November 5 to November 11. This is not a two-week time period as claimed with reference to the one-half of the monthly rent amount, being $1,375. I am not satisfied of either the need to stay elsewhere during that time, nor the exact cost thereof. If the Tenant was away for six days, they have not explained fully why they are claiming for a two-week time period.

Additionally, the Tenant specified a "downstairs suite flood"; however, I reviewed the tenancy agreement, and the downstairs area is nowhere specified as a separate rental unit. I accept the Landlord's point that the Tenant SL had the rest of the rental unit available to them. They were not without a home during this time period as the equivalent of two weeks rent-free would seem to suggest.

I dismiss the Tenant's claim for this type of compensation. I find they have exaggerated both the time period involved and the impact of allegedly no use of the basement area.

2 I am not satisfied of the impact of fans operating for full days during a complete period of two weeks. Presumably all Tenants in the rental unit were affected by the interruption of the fans; however, there was one single account from the Tenant SL. On

this singular point, I also side with the Landlord to find that the Tenant resided with the other Tenants upstairs, away from the noise of temporary fans used to dissipate the moisture. I find damage or loss to the Tenant did not exist here.

3 I find the amount of $1,000 was not qualified in the Tenant's account. I also find there were also other means of obtaining either cold water or hot water as necessary within the rental unit. This is one faucet within the rental unit where others were available. I find it reasonable that the Tenant could have turned off the water supply to that faucet in order to eliminate the risk of a younger child using the faucet with no cold water in place. In sum, there is no provision for what the amount of $1,000 represents in terms of a devaluation of the tenancy as a whole. I dismiss this piece of the Tenant's claim, with no adequate explanation of its value from the Tenant.

4 I find the Tenant did not show the immediate high-risk situation of the need to repair or patch concrete in the garage. Additionally, the Tenant provided no evidence of the expense to them in terms of any purchase made. With no proof to qualify this amount, I dismiss this piece of the Tenant's claim.

5 Similarly, the Tenant provided no receipts for any expense they incurred for fence or gate repairs. The Tenant did not present an urgent need for these repairs to be completed, and I find there was no adequate reason in place to allow the Landlord ample opportunity to repair in the circumstances. With no record of any purchase, there is no evidence to establish the value of the monetary loss to them; therefore, I dismiss this piece of the Tenant's claim.

6 For garage lighting, I find the Tenant unilaterally made this purchase on their own. In their note of November 7, 2021 to the Landlord – within one week of moving into the rental unit – the Tenant noted that they installed ceiling lights in the garage. I find this was both without the Landlord's consent or agreement on the expense involved, and without providing the Landlord the opportunity to make that installation or repair as necessary. I find the Tenant hastily made the repair on their own, without proper consultation with the Landlord. I grant no compensation for this amount. As well, the receipt proffered by the Tenant shows a bank withdrawal on November 13, 2021 for $135.50. A claimed amount of $165 does not adequately account for the amount of labour involved to install said lighting.

7 The Landlord stated their agreement to reimbursement of this incidental cost borne by the Tenant. There was no proof of purchase from the Tenant, and similarly no proof of the amount of purchase of a similar item. Without this evidence of the value of such an

expense, I dismiss this piece of the Tenant's claim, despite the Landlord's agreement as to the need thereof.

8 For cleaning to indoor and outdoor storage areas, the Tenant did not present this in terms of labour hours or specifics on work involved. There are photos that show the *need* for cleaning, and I will accept that these are the areas described. Again, the amount provided by the Tenant here was not quantified with evidence. There is a receipt for $15 at a local waste disposal site; however, the bulk of this $526 claim is left without description or other qualifying information. I cannot grant compensation for an amount that exists merely as a number listed on a form completed by the Tenant, and no evidence. I dismiss this piece of the Tenant's claim.

9 I am not satisfied of the need for asbestos testing that the Tenant went ahead and paid for on their own. This was in early November 2021. Again, I find this was before the Landlord even had the chance to assess the need for asbestos testing, and the indication was that there was no wall removal which is what would normally trigger that need. The Tenant did not present a definitive recommendation for that testing. Additionally, the amounts they provided on their receipts add up to $189, not the $250 as claimed. This is a disingenuous way to claim an extra amount over what they in fact paid, as shown in their evidence. I dismiss the Tenant's claim, not being satisfied of the need or its true expense.

10 As above, while the Landlord accepted that the use of electricity increased due to the operation of the fans to dissipate moisture, the Tenant did not quantify the amount of $50 claimed here. A proportion of the utility amount for that timeframe was not set out by the Tenant, nor was there a comparative amount provided to gauge the extra power usage for that individual time frame. I find that, similar to points above, this is merely a number put down by the Tenant, simply to round off the total amount of money claimed for miscellaneous expenses on the Monetary Order Worksheet.

For the reasons above, I dismiss the Tenant's claim for compensation for monetary loss or other money owed. There is no leave to reapply on this issue or these expenses. In the future, the Tenant must afford the Landlord sufficient time to complete requested repairs or maintenance. Given the age and overall condition of the rental unit, the Tenant must accept that there are a number of requests in place for improvements of various kinds, and they should be assisting the Landlord to determine priorities in order to move forward.

Additionally, I find the Tenant making this Application within two weeks of a prior Arbitrator order is not an effort at minimization where the Landlord did not yet have the chance to

address the Tenant's separate concerns. The Tenant seeks the Landlord's compliance with the legislation and/or the tenancy agreement; however, this Application was started within two weeks of a previous Arbitrator's decision that put specific provisions in place. This piece of the Tenant's claim was filed before the Landlord had a reasonable opportunity to follow the Arbitrator's decision. For this reason, I dismiss the Tenant's request for the Landlord's compliance, without leave to reapply.

Finally, the Tenant provided the amount of $2,750 for the rent reduction portion of their Application. In line with the four points raised above, the Tenant has not qualified this part of their Application to specify whether it is a reduced amount per month going forward (which would then be 100% rent reduction per month), or a portion thereof that over the course of successive months would add up to the amount of $2,750. This information on the specifics of this request was not present in the Tenant's Application. A full rent reduction would mean that the Tenant had no use of any part of the rental unit home which I find was not the case here. As well, if the Tenant is pleading for a reduced rent amount going forward, they did not specify what the aim of reduced rent actually is, and what would have to be in place for them to pay rent in full as required. Minus such specifics, I am left to speculate on the details of the Tenant's Application, and to make any ruling from that speculation would be fundamentally unfair to the Landlord. For this reason, I dismiss this part of the Tenant's Application, without leave to reapply.

In conclusion, I dismiss the Tenant's Application for compensation in its entirety, without leave to reapply. This decision forms part of the record concerning this tenancy and will be reviewed in any future action initiated by the Tenant through the Residential Tenancy Branch.

Because the Tenant was not successful in this Application, I grant no reimbursement of the Application filing fee.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application for compensation in its entirety, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: December 2, 2022

Residential Tenancy Branch