



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Skyline Living
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the Tenants' application under the Residential Tenancy Act (the "Act") for:

- compensation of \$20,264.77 for monetary loss or money owed by the Landlord pursuant to section 67; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

One of the Tenants, SJB, and the Landlord's representative SD attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The parties confirmed receipt of each other's documentary evidence for this hearing.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?
2. Are the Tenants entitled to reimbursement of the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments

relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on June 15, 2022 for a fixed term ending on June 30, 2023. Rent is \$1,890.00 per month plus \$165.00 for parking. The Tenants paid a security deposit of \$1,027.50.

The Tenants submitted the following timeline of events:

- During the walkthrough of the rental unit on June 14, 2022, the Tenants noticed a water stain in the ceiling that was painted over. The Tenants complained about a mildew smell in this bedroom.
- On August 6, 2022, more water stains appeared on the ceiling. The Tenants called management who said they would look into it.
- On August 9, 2022, water was running onto the Tenant's daughter's bed. The Tenants moved the mattress and box spring into the living room. Management attended and said they would call someone. A restoration company attended on August 11, 2022, performed a quick inspection, and indicated that repairs could start within 48 hours.
- On August 12, 2022, an onsite manager, T, removed wet insulation and took pictures of the water in the ceiling. By this time, the Tenants had moved the entire contents of the affected bedroom into the living room, dining room, master bedroom, and the Tenant's breakfast bar area. The Tenants purchased a portable cloth rack and plastic sheets to protect belongings from drywall dust and other debris. The Tenants submitted receipts for a new mattress, clothes rack, and plastic covers into evidence. According to SJB, the bedroom where the leak occurred is approximately 10 ft by 14 ft.
- On August 16, 2022, a second restoration company, OR, attended the rental unit. Management indicated that they were waiting for a quote. On August 22, 2022, T advised that management received a quote from OR and that it would be cheaper if T did some of the work. T cut down part of the ceiling. A plumber attended and fixed the leaking pipe on August 23, 2022. The following day, T patched the ceiling.
- On August 30, 2022, OR attended to give another quote. On September 2, 2022, OR cuts down most of the ceiling, including work performed by T. Drywall repairs took place from September 6 to 9, 2022. Painting took place on September 12 and 13, 2022. Cleaners attended to remove the protective cover for the floor and mop the floor on September 13, 2022. An electrician installed the light fixture and smoke detector on September 15, 2022.

The Tenants submit that they had to clean the apartment on September 16, 2022 because of the drywall dust, and moved everything back into the bedroom and closet. SJB stated that the Tenants had to change out filters three times due to the amount of drywall dust.

The Tenants submit that they had planned a vacation from September 10 to 18, 2022, which they were unable to take as they had to stay home to supervise OR. The Tenants argue that management did not supervise OR and two of the four onsite managers were on their own vacation.

SJB argued that the repairs took so long because the Landlord was trying to save money. SJB stated that the Tenants never saw the first restoration company again, even though the Tenants were told that they could start repairs right away. SJB argued that by law, the Landlord had to take care of the problem as soon as possible, but the Landlord did not do so and took a long time to complete the repairs.

The Tenants submit that their family was unable to use the rental unit and were unable to get proper sleep during the restoration period with the bed in the living room.

The Tenants seek compensation as follows:

Item	Amount
Loss of Use of Rental Unit	\$2,175.00
Replacement Mattress	\$770.63
Clothes Rack	\$38.97
Plastic Covers	\$10.17
Furnace Filters (\$10.00 × 3 filters)	\$30.00
Estimated Additional Electricity Used (during repairs)	\$60.00
Time Spent Moving and Cleaning (36 hours × \$20.00 per hour)	\$720.00
Time Spent Supervising Restoration Company (6 days)	\$960.00
Loss of Vacation	\$5,000.00
Excessive Stress, Anger, and Frustration (\$100.00 × 3 people × 35 days)	\$10,500.00
Total	\$20,264.77

SJB confirmed that the Tenants have insurance but were told that this matter is the Landlord's responsibility, so the Tenants did not submit a claim under their policy.

In response, the Landlord submits that the spot on the ceiling was dry and had no smell at the time of the walkthrough, so it was painted over. The Landlord provided the move-in condition inspection report which includes a photo of the ceiling spot.

The Landlord submits the following version of events:

- When the Tenants reported the matter on August 10, 2022, site staff attended and noticed a loonie-sized stain on the ceiling. Site staff asked the tenants upstairs to stop using the shower so the Landlord could determine the source of the leak. Staff asked the Tenants to check if the leak got bigger.
- On August 13, 2022, the Tenants confirmed the leak was still there, had not worsened but also had not dried. Site staff then contacted OR who said will call back on August 15, 2022.
- OR attended the rental unit on August 16, 2022. OR sent a quote which was approved.
- Site staff attempted to enter the rental unit on August 22, 2022 to cut a hole in the drywall to assess the source of the drip. Tenants had not confirmed access to the rental unit. On August 23, 2022, site staff opened up the ceiling and confirmed that it was the sprinkler dripping and there was no mould. Site staff put up new drywall just to cover the hole.
- On August 30, 2022, OR advised that they can commence work next week. On September 2, 2022, OR confirmed September 6 to 13, 2022 for drywall repairs and painting. The repairs were completed September 13, 2022.

SD explained that OR is the Landlord's bonded contractor, and the Landlord had not worked with the other restoration company for a few years. SD stated that OR was busy with major emergencies and tried to reschedule so that they could come in sooner. SD stated that the Landlord does not have staff who stand there when the Landlord's bonded contractors are doing repairs.

SD referred to email correspondence that she had sent to the Tenants, advising them to file an insurance claim, which the Tenants refused. SD confirmed that the Tenants have insurance as it was required under the parties' tenancy agreement. SD referred to sections in the parties' tenancy agreement regarding repairs, insurance, and damage to property.

SD referred to an email to the SJB dated September 29, 2022. In this email, the Landlord offered to compensate the Tenants \$60.00 for extra utilities used, as well as \$247.65 for the loss of use of the bedroom based on square footage (100 sq ft / 954 sq

ft) for five weeks. SD stated that \$60.00 for electricity was a good faith offer as the Tenants did not provide proof of any extra usage. SD stated that the extra usage came to approximately \$6.32, but this evidence came after the evidence submission deadline.

Analysis

1. Are the Tenants entitled to compensation for monetary loss or other money owed?

Section 67 of the Act states that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

According to Residential Tenancy Branch Policy Guideline 16. Compensation for Damage or Loss, 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.

In this case, I accept that the source of the leak was a sprinkler. However, I find the Tenants have not submitted evidence to show that the leak resulted from a breach of the Act, the regulations, or the tenancy agreement by the Landlord. I find that aside from the photo of a small stain on the ceiling taken during the walkthrough, there are no photos or other evidence to show how the leak occurred. I find there is insufficient evidence to demonstrate that the leak was caused by the Landlord's inadequate or improper maintenance of the building. Furthermore, I find there is insufficient evidence that the small stain was wet or that there was mould. As a result, I am unable to find that the Landlord had acted unreasonably in addressing the issue.

Under these circumstances, I am not satisfied the Tenants have established that their losses in the form of the mattress, clothes rack, plastic covers, furnace filters, time spent moving and cleaning, loss of vacation, and excessive stress were caused by the Landlord's non-compliance with the Act, regulations, or tenancy agreement.

In addition, I note I do not find the Tenants to have complied with section 22 of their tenancy agreement regarding damage to their property. I find the Tenants did not submit an insurance claim for damage to their mattress. I also note the Tenants have only provided evidence for a new mattress but no photos of the original mattress to show the extent of damage.

I further note I do not find the Tenants to have acted reasonably to minimize their losses by foregoing their vacation to supervise the Landlord's bonded contractors. I do not find the Tenants to have proven that the value of the loss of their vacation was \$5,000.00.

Finally, I note that the law does not recognize upset, disgust, anxiety, agitation or other mental states that fall short of injury. Compensable injury must be serious and prolonged, and psychological disturbance that rises to the level of persona injury must be distinguished from psychological upset.

Based on the foregoing, I dismiss the Tenants' claims regarding compensation for the mattress, clothes rack, plastic covers, furnace filters, time spent moving and cleaning, loss of vacation, and excessive stress without leave to re-apply.

I find the Tenants' claims for (a) loss of use of the rental unit and (b) additional electricity used to remain applicable regardless of how the leak occurred. I will address these two items below.

a. Loss of Use

According to Residential Tenancy Policy Guideline 6. Entitlement to Quiet Enjoyment, a tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to

which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

Although I do not find the leak to have resulted from a breach by the Landlord, I find the Tenants were nevertheless unable to use one of the bedrooms in the rental unit for approximately five weeks. I find this loss of use amounts to a loss of quiet enjoyment under section 28 of the Act and a reduction in the value of the tenancy.

I accept SJB's testimony that the size of the bedroom is approximately 10 ft by 14 ft (or 140 sq ft), and I accept the Landlord's evidence that the total square footage of the 2-bedroom suite is 954 sq ft.

Therefore, pursuant to section 67 of the Act, I order the Landlord to compensate the Tenants the sum of \$346.70 for loss of use of one bedroom for five weeks (calculated as $140 \text{ sq ft} / 954 \text{ sq ft} \times \text{rent of } \$1,890.00 / \text{month} (4 \text{ weeks}) \times 5 \text{ weeks}$).

I note the Tenants' evidence that they had to relocate the contents of the bedroom to the remainder of the home during the repairs. I accept that while this created an inconvenient living arrangement for the Tenants' family, I find there is insufficient evidence to show that this inconvenience was sufficiently serious or caused the Tenants to be unable to use the remainder of their home, such that further compensation would be warranted.

b. Additional Electricity Used

I find that as part of the Landlord's obligation to repair and maintain the rental unit, the Landlord is responsible to bear the cost of any additional electricity consumed in the rental unit due to the repairs. Although the Tenants have not provided evidence to support their estimated cost of \$60.00, I find the Landlord agrees to compensate the Tenants this amount. Therefore, I allow the Tenants' claim under this part.

2. Are the Tenants entitled to reimbursement of the filing fee?

The Tenants have been partially successful in this application. I grant the Tenants reimbursement of 50% of their filing fee under section 72(1) of the Act.

Item	Amount
Loss of Use of Bedroom (140 sq ft / 954 sq ft × rent of \$1,890.00 / month (4 weeks) × 5 weeks)	\$346.70
Additional Electricity Used	\$60.00
Subtotal	\$406.70
50% of Filing Fee	\$50.00
Total Amount Awarded to Tenants	\$456.70

Pursuant to section 72(2)(a) of the Act, I authorize the Tenants to deduct \$456.70 from July 2023 rent payable to the Landlord in full satisfaction of the total amount awarded in this decision.

Conclusion

The Tenants' claim for compensation for monetary loss or other money owed is granted in the amount of \$406.70. The remainder of the amounts sought by the Tenants is dismissed without leave to re-apply. The Tenant's claim for reimbursement of the filing fee is granted in part (\$50.00).

The Tenants are authorized to deduct **\$456.70** from July 2023 rent payable to the Landlord in full satisfaction of the total awarded.

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: June 10, 2023

Residential Tenancy Branch