



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Tenant (the Application) under the Residential Tenancy Act (the Act), on September 3, 2022, seeking:

- An order for the Landlord to comply with the Act, regulation, or tenancy agreement;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was originally convened by telephone conference call on January 23, 2023, at 11:00 am and was adjourned to 1:30 pm on May 12, 2023. An interim decision was made on January 23, 2023, which should be read in conjunction with this decision. The reconvened hearing was attended by the Tenant and the Landlord, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

Issue(s) to be Decided

Is the Tenant entitled to an order for the Landlord to comply with the Act, regulation, or tenancy agreement?

Is the Tenant entitled to compensation for monetary loss or other money owed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

Although the parties agreed there were several issues with the rental unit after the Tenant moved in, such as a leaky dishwasher and fridge, improperly functioning closet doors, ants, and a broken floor transition, they disagreed about whether these issues were properly resolved in a timely manner. They also disagreed about whether the Tenant received adequate compensation for the loss of a garburator, whether the washer and dryer were broken or malfunctioning, and whether the Landlord should be responsible for the fact that the Tenant did not know how to properly operate the patio door lock.

The Tenant stated that the rental unit was not in good repair when they moved in, which the Landlord would have known if they had acted diligently to inspect it before renting it out, and that the Landlord either took too long to repair issues, or failed to deal with them at all. The Landlord acknowledged that both the fridge and dishwasher leaked, but denied any knowledge of these issues prior to the start of the tenancy as they had just purchased the property and were not advised of any issues by the previous owner. The Tenant stated that the Landlord was notified of the issues on March 26, 2022, and although the Landlord came to look at them several times, the fridge was not fixed until April 13, 2022, and the dishwasher was not replaced until April 29, 2022. The Landlord argued that they were not advised of the issues until April 5, 2022, and that they had them dealt with expediently.

The parties agreed that the garburator broke down and was removed on Approximately April 20, 2022. The Landlord stated that it was rusted through, and they opted not to replace it as the plumber advised them that they may experience similar issues in the future. The Tenant was upset about its removal as the garburator was one of the things they were most excited about and loved using the one in their previous residence.

The Tenant stated that trim between two floors with a height difference fell off after only a few days of moving in, and that they do not like the way the Landlord chose to repair it. The Landlord agreed that the flooring transition fell off due to no fault of the Tenant, and stated that it was subsequently glued back into place.

The Tenant states that they have had ongoing ant issues in the rental unit since November of 2022, and that the Landlord has failed to adequately deal with them. The Landlord agreed that there was an ant issue in the rental unit, and stated that these things happen. The Landlord stated that the Tenant was initially sending them

photographs of only a few ants at a time, but after they requested more action from them in December, they spoke with the STRATA and began looking for an exterminator. The Landlord stated that the exterminator has treated the unit twice since then, once on December 6, 2022, and once in early January of 2023.

The Tenant stated that shortly after they moved in, they noticed that the hallway closet doors were too tight, and were difficult to open and close. The Tenant stated that one of the hallway doorhandles came partially loose approximately three days after they moved in and has not been properly repaired by the Landlord. The Tenant stated that they are also displeased with the Landlord's response to this issue, which is to simply not close the doors fully. The Landlord stated that the doors have become tight as the building has settled over the years and that they had to re-jig the door handle. The Landlord stated that they sent a video to the tenant on how to use the door handle now, and that the Tenant thanked them for the repair. The Tenant disagreed.

The Tenant states that they were not provided with any manuals for the washer and dryer, and never know if it will function properly. The Tenant stated that certain cycles do not work and that it smelled terrible at the start of the tenancy. The Landlord acknowledged that the Tenant has had difficulty figuring out how to operate the washer and dryer. The Landlord stated that as they do not have the manuals, they sent the Tenant YouTube videos. The Landlord stated that although the Tenant complained of a smell at the start, they came to look at it and never observed any odour or they would have cleaned it or had it cleaned. The Landlord stated that they advised the Tenant to run a bleach cycle if they are concerned with its smell.

The Tenant stated that they were unable to get the patio door to lock, which was both a security concern and an issue for their insurer, and that they were displeased with the Landlord's response to their concerns. The Tenant stated that the Landlord advised them that as the rental unit was on the 26th floor it was not a security concern, and probably would not have it fixed. The Tenant stated that this was unacceptable as the Landlord required them to have tenant insurance as part of their tenancy agreement and the malfunctioning lock voided their tenant's insurance. Although the Landlord agreed that they did not consider the patio lock to be a security issue given the location of the rental unit, they stated that they called the STRATA and had it inspected on July 3, 2022, at which time it was determined that the door lock was not broken, and that the Tenant simply did not know how to operate it properly. The Tenant responded by stating that the lock was not intuitive.

Although the parties agreed that one of the elements on the gas stove does not function properly, the Landlord stated that they did not see this as an issue as the Tenant needed only to turn on another element first to get it to work. The Tenant disagreed stating that they should not have to do that, and the Landlord needs to have it repaired.

The Tenant also stated that the Landlord has failed to protect their right to quiet enjoyment. The Tenant stated that as of April 6, 2023, they have been subjected to over 225 different STRATA bylaw violations from other residents of the building, and woken up at least 66 times by smoking and partying. The Tenant stated that the Landlord has failed to act diligently to deal with these issues. The Landlord disagreed stating that as this is a STRATA building and they own only the rental unit, they do not have control over the actions of other occupants. The Landlord stated that they have worked with the STRATA to deal with the issues, but the STRATA has been clear that they need more evidence to issue any more fines or proceed with evictions. The Landlord also stated that the Tenant hinders their ability to deal with the issues by refusing to allow them to bring complaints forward to the building management on their behalf, and by not always reporting issues to them. Although the Tenant denied failing to advise the Landlord of all complaints, they agreed that they have not permitted the Landlord to take on reporting the issues on their behalf as they do not trust them.

The Tenant therefore sought \$4,800.00 in compensation for their loss of use and loss of quiet enjoyment, which amounts to 3 months rent. They also sought an order for the Landlord to repair the stove element and protect their right to quiet enjoyment, as well as recovery of the \$100.00 filing fee.

Analysis

Is the Tenant entitled to an order for the Landlord to comply with the Act, regulation, or tenancy agreement?

Section 28 of the Act states that a tenant is entitled to quiet enjoyment which includes freedom from unreasonable disturbance. However, this does not mean that a landlord is responsible for all disturbances suffered by a tenant in a rental unit. Residential Tenancy Policy Guideline (Policy Guideline) #6 defines a breach of quiet enjoyment as a substantial interference with the ordinary and lawful enjoyment of the premises, which includes interferences directly caused by the landlord and situations where the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these. Policy Guideline #6 goes on to state that a landlord can be held

responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Although the Tenant argued that the Landlord is responsible for the loss of quiet enjoyment suffered by them due to the actions of other occupants of the building, I disagree. The Landlord owns only the rental unit occupied by the Tenant. As a result, I find that the Landlord has no direct control over the actions of the other occupants of the building, whether they be owners of the other units or tenants of those owners. As a result, I find that the Landlord cannot be held accountable for their actions. Although the Tenant disagreed, I am satisfied that the Landlord has acted reasonably to address the Tenant's concerns with the STRATA corporation, and that the actions of the STRATA corporation, and owners/occupants of the other units in the building in response to the Tenant's complaints, or lack thereof, are well beyond the Landlord's control. As a result, I dismiss their claim for an order for the Landlord to protect their right to quiet enjoyment in this regard, without leave to reapply, as I am satisfied that the Landlord has acted reasonably to do so under the circumstances.

Although I am satisfied that the Landlord attempted to repair the hallway closet doors, I am not satisfied that the repairs done have left them in a fully functional state. As a result, I order the Landlord to have them correctly repaired or replaced as soon as possible and not later than 30 days after the date of this decision, pursuant to section 32(1) of the Act.

I am satisfied by the testimony of the parties that one of the elements on the gas stove does not function correctly and that the Landlord has been aware of this issue for some time and has refused to fix it. I find this to be a breach of section 32(1) of the Act. As a result, I order the Landlord to either have the burner repaired or the stovetop replaced with something fully functional that is comparable in look, size, and function. This work must be done by a qualified professional in good standing as soon as possible, and not later than 30 days after the date of this decision. I also award the Tenant \$200.00 for their loss of use of this burner over the course of the tenancy.

Is the Tenant entitled to compensation for monetary loss or other money owed?

Although the Tenant sought compensation for loss of quiet enjoyment related to noise complaints and other disturbances from other occupants of the property, as set out above, I have already found that the Landlord has acted reasonably with regards to the Tenants complaints, and that the Landlord is ultimately neither in control of or

responsible for the actions of other owners or occupants of the building. As a result, I dismiss the Tenant's claim for monetary compensation related to noise complaints and other disturbances without leave to reapply.

Policy Guideline #6 states that temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Although there was agreement that the dishwasher and fridge leaked, that a flooring transition came loose, and that there was an ongoing ant problem, I am satisfied that the Landlord has dealt with these issues, albeit not always in the Tenant's preferred manner, within a reasonable period. For example, the Landlord had the rental unit treated twice for ants, and had the dishwasher replaced within a few weeks of being notified it was leaking. Although the Tenant also had issues with their fridge, they acknowledged that no food spoiled and that on average, the fridge leaked perhaps a cup of water a day.

As a result, I find that any discomfort or inconvenience suffered by the Tenant in relation to these issues was temporary, and therefore does not constitute grounds for a claim for loss of quiet enjoyment. As a result, I dismiss those claims without leave to reapply. I also dismiss the Tenant's claims in relation to the patio door lock without leave to reapply as it was never broken. I do not find that the Landlord is responsible for the Tenants failure to operate the patio door lock correctly. Despite the above, the Tenant still lacked usage of their dishwasher for several weeks. As a result, I grant them \$100.00 in compensation for loss of its use.

I am satisfied that the Landlord removed a garburator on approximately April 20, 2022, which was important to the Tenant, without proper notice or compensation as required under section 27(2) of the Act. As a result, I find that the rental unit has been devalued by approximately \$50.00 per month. I therefore award the Tenant \$725.00 in compensation for the loss of their garburator between April 20, 2022, and June 30, 2023. Beginning July 1, 2023, the Tenant may deduct \$50.00 per month from their rent for the loss of their garburator. Should the Landlord choose to have one re-installed, the ongoing rent reduction will cease to be effective the month following its reinstallation.

Although the Tenant argued that the washing machine smelled and does not function correctly, the Landlord disagreed, and I am not satisfied by the evidence provided by the Tenant that this is the case. As a result, I dismiss the Tenant's claims in relation to the washer and dryer without leave to reapply.

As the Tenant was successful in at least some of their claims, I award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a monetary order in the amount of **\$1,125.00**, and I order the Landlord to pay this amount to the Tenant. The Tenant is provided with this order 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, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. In lieu of serving and enforcing the monetary order, the Tenant is entitled to withhold this amount from the next months rent payable under the tenancy agreement, should they wish to do so, pursuant to section 72(2)(a) of the Act.

Beginning July 1, 2023, the Tenant may deduct \$50.00 per month from their rent for the loss of their garburator.

I believe that this decision has been rendered within 30 days after the close of the proceedings, in accordance with section 77(1)(d) of the Act and the *Interpretation Act* with regards to the calculation of time. However, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated order, nor my authority to render them, are affected if this decision and the associated order were issued more than 30 days after the close of the proceedings.

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

Dated: June 12, 2023

Residential Tenancy Branch