



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OT, FFT

Introduction

The Tenant filed their Application for Dispute Resolution (the “Application”) on April 21, 2023. They indicated that they had an issue that was not listed on the proper Application. They also seek reimbursement of the Application filing fee.

The matter proceeded by hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 4, 2023.

Both the Tenant and the Landlord attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present affirmed testimony during the hearing. Both the Landlord and the Tenant confirmed they received the documentary evidence of the other.

The Tenant applied for an issue listed as ‘Other’ on the Application form; however, on review with the Tenant I determined their Application more properly centres on monetary compensation. I have amended the issues, listed below, to reflect this more accurately.

Preliminary Matter – timeline for this decision

While the *Act* s.77(1)(d) sets a 30-day time limit for a decision of the delegated decision maker, ss. (2) states that authority is not lost, nor the decision invalidated, if a decision is given past the 30-day period. I reached this decision through review and evaluation of all testimony and evidence.

The parties’ right of due process, entailing my thorough consideration of all evidence, and my deliberation of the applicability of the law, outweighs the need for a 30-day time limit. Also, this

was a matter of a tenant's right to compensation for what they alleged were breaches to their quiet enjoyment of their rental unit in a tenancy that had ended by the time of the hearing. This did not concern an eviction or an end of tenancy which are matters of more immediate human consequence.

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 Tenant eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

In the hearing I confirmed the basic information about the tenancy agreement that was in place between the parties. The tenancy, as printed in the agreement, started on March 15, 2022, initially set for a one-year fixed term to continue as a month-to-month agreement. The rent amount was \$1,500 per month. The Tenant paid a security deposit amount of \$750.

in the hearing, the Tenant stated that their understanding, at the time of signing the agreement, was "that it would be a functioning rental unit."

In the hearing, both the Landlord and the Tenant confirmed that this tenancy ended on April 30, 2023.

In their Application, the Tenant included a written "Schedule" dated April 20, 2023 wherein they listed expenses to them totalling \$3,518 "for the inconvenience and expenses incurred in November 2022, December 2022 and January 2023." They revised this document as "Tenant's Statement" on July 10, 2023, with the total then at \$4,348.43, this for "being deprived of the right to quiet enjoyment of the premises and for expenses incurred in November 2022, December 2022 and January 2023 as a result of the interference with my tenancy."

The Tenant made the following points in this written statement:

- "the Unit became almost unlivable after part of the ceiling and some of the walls were filled with water from an above-failed [boiler] on November 6, 2022."

- there was a breach of quiet enjoyment because of “Ongoing flooding repair work [that] continuously inconvenienced and disrupted me”
- they “should be entitled to rent reduction/reimbursement and some compensation due to the inconvenience and expenses incurred, as a result of the repair works.”
- the Landlord “should have made arrangements to get me a similar place at a similar price or agreed with me to a temporary rent reduction during the period repairs were being made in the rental unit”
- there were existing repairs not completed prior to the flood incident: food waste disposal not repaired; lights in the hallway; toilet tank defective
- timeline:
 - early Nov 2022 – early Dec 2022: drying machines running 24 hours per day – Tenant had to leave to stay with a friend for most of Nov
 - early Dec – late Dec 2022: repair work unfinished – studio was “unwelcoming”, with air “high in dust and very unhealthy”
 - late Dec 2022 – mid-Jan 2023: drywall repairs in “full mode”, from Dec 28, 2022 to Jan 6, 2023 Tenant went to another province “to be near family in this difficult moment” – more dust and drywall particles upon the Tenant’s return
 - mid-Jan 2023 to late-March 2023: “minor repairs slowly made on the front entrance and in the common hallway” – repair work ended on March 21

| | Items | \$ claim |
|----|---|----------|
| a. | one-half month rent refund, Nov 2022 | 750.00 |
| b. | one-half month rent refund, Dec 2022: | 750.00 |
| c. | one-half month rent refund, Jan 2023 | 750.00 |
| d. | expenses for restaurants and fast food | 551.37 |
| e. | expense to a friend for shelter in Nov 2022 | 500.00 |
| f. | plane ticket | 522.06 |
| g. | increase in BC Hydro utility | 25.00 |

h. loss of income 500.00

| | |
|--------------|-------------------|
| Total | \$4,348.43 |
|--------------|-------------------|

In the Tenant's evidence they provided 42 photos, copies of receipts for meals, emails notifying the Tenant about fans placed within the rental unit, and a receipt for their air travel (Dec 28 – Jan 5).

The Tenant provided a record of their email with the Landlord, including the following:

- The Tenant's statement to the Landlord on November 9: "This is to confirm that you are not able or planning to help me with regards to the inconvenience caused by the works done in my rental suite since Sunday November 6 2022."
- Nov 30: the Tenant informs the Landlord that they are "retro-actively holding half of the rent for November (which has already been paid)" this "for failure to ensure my enjoyment of the rented place or take precautions or make arrangements to ensure that I am not severely inconvenienced"
- Dec 2: the Landlord served the Tenant a 10-Day Notice to End Tenancy for unpaid rent
- Jan 9: the Landlord inquiring on why the Tenant did not pay rent for January 2023, stating "Not paying the rent is illegal and unfair."
- Jan 10: the Tenant responds to say they "have been seriously inconvenienced by the flooding incidents and its consequences" – stating they went away from Dec 28 to Jan 6 to allow the drywallers to finish the job insider the apartment, then to return to "a place full of dust and drywall particles"
- Mar 15: upon receiving confirmation of an upcoming hearing from the Residential Tenancy Branch, the Tenant messaged the Landlord to say "From my perspective, all the issues between us have been resolved, and I am ready to withdraw my application."

In the hearing the Tenant described the 21-story building subject to the boilers breaking because of rain, and all units below the floor holding that boiler were affected. This meant basically water was going through the walls down to individual units, including the rental unit. In the Tenant's estimation, this "didn't look too bad, but water was in the walls, and after drying, [there was] drywall replacement."

The Tenant's pictures show equipment installed initially by a restoration company to remove moisture, combined with a video showing the level of noise output by these machines. Other pictures show the state of the rental unit was the equipment was removed; specifically, there was an opening in the wall and a lot of drywall material was coming out.

Regarding their communication with the Landlord, the Tenant stated that on November 8, the day of the Landlord's visit, the Tenant asked the Landlord for help, and the Landlord instructed the Tenant to inquire with the strata, and then to use their own insurance for the matter. "The Landlord stated he would not help and was not obligated to help", and this led the Tenant to object.

The Tenant then described not having a response to their letter of November 9, and so the Tenant thought they would withhold the rent. As a result of the Landlord serving the 10-Day Notice to End Tenancy for Unpaid Rent, the matter went to a separate dispute resolution proceeding, and an arbitrator granted the Landlord an order of possession in line with that end-of-tenancy notice. The Tenant stated that they did not pay rent and deducted the security deposit amount.

The Landlord provided a written response in which they detailed that they found no water or damage in the rental unit when they visited on Nov 6. They observed only a water stain on the ceiling beside the rental unit door. The boiler leaked on the 23rd floor in the building and that "cannot cause a flood in [the rental unit] on the 7th floor."

The Landlord provided a comprehensive 9-page report from the emergency services provider. This lists the entry, entry hallway, entry hallway ceiling, "closet 1" and "closet 2" as the affected areas in the rental unit, noting a restoration company that arrived and was called in by the strata. Also noted: "No signs of mold or neglect." with "All mapped out areas are reading dry."

In response to what they heard from the Tenant in the hearing, as well as the Tenant's evidence, the Landlord provided the following points in the hearing:

- this rental unit is on the 7th floor
- the Landlord visited the rental unit on Nov 6 and the floor was dry – the Landlord found only a stain on the entry
- on Nov 8, the Tenant asked for compensation from the Landlord's insurer – the Landlord's response was that their insurance did not cover the Tenant, and the Landlord instructed the Tenant to go to their own insurer

- the Tenant stopped paying rent and the Landlord did not authorize any expenses to be deducted from rent
- everything was fixed in the rental unit by Dec 29 – strata insurance covered the emergency restoration, and the Landlord’s own insurer covered repairs in the rental unit
- while the Tenant mentioned other items requiring repair in the hallway – i.e., the baseboards – this is not the responsibility of the Landlord
- repairs required: only replacing 6 pieces of baseboards in the rental unit entrance and a stain on the ceiling was painted because it is a concrete ceiling – the Landlord has a separate statement from their insurer

In summary, the Landlord stated there was “minimal interruption to the Tenant” from the work required. This was 6 baseboards in total that were off the wall, with no drywall to be repaired inside the rental unit. This work was all completed on December 29.

The Tenant reiterated that they received no help from the Landlord in this matter. They had to leave the apartment and incurred expenses to stay with a friend, this because the place was “totally unbearable.” In summary, the work involved was dryers placed to ensure no water was present for the whole month of November; when that drying was finished, this left an open space in the wall, not completed until December 24.

Analysis

A landlord’s obligation to provide and maintain a residential property in a suitable state of repair is set out in s. 32 of the *Act*. This is a state of decoration and repair that “complies with the health, safety and housing standards required by law”, and suitability for occupation by a tenant.

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. Additionally, 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 if I determine that the claim is valid.

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. To be successful in a claim for compensation for damage or loss an applicant has the burden to provide sufficient, compelling evidence to establish all of 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 find the Tenant provided submissions on what they feel were basic breaches by the Landlord; they referred to the lack of completed repair, and the impact this had on their day-to-day life in the rental unit that can be described as a loss of quiet enjoyment.

I find there was no breach of s. 32 by the Landlord. The Tenant was not privy to other communication between the Landlord and their insurer, or the contractor who completed the work. There is no evidence the Landlord did not address the situation to the fullest extent possible, and involved their insurer for completion of the work.

The work itself was basic in its completion. I find as fact that this work did not interrupt the Tenant's ability to use the rental unit with virtually no interruption at the entrance closet. The Tenant cited their inability to use that closet; I find that is a minor inconvenience.

I find the Tenant's right to quiet enjoyment was not interrupted or otherwise impinged upon by contractors or the Landlord in completion of the work. The Tenant did not provide specifics in terms of daily, or even regular or frequent, interruptions to their use of the rental unit. Though the Tenant claimed an income loss, they gave no details thereof.

Specifically on the Tenant's claim:

- The Tenant is not entitled to compensation in the form of rent reduction – there is NO rent refund for any of November 2022, December 2022, or January 2023. The Tenant did not prove any breach or violation of the *Act* or tenancy agreement to that extent, and I am not satisfied that the work involved posed any inconvenience to the Tenant in that time.

Further, I find that the work involved in the hallway was not the responsibility of the Landlord. The Tenant claimed this interrupted their ability to have guests in the rental unit; I find that is an unfounded claim in the extreme.

The Tenant was not authorized to deduct any portion of their rent during this time and that served as the reason the Landlord ended the tenancy successfully in that

timeframe. I grant no compensation to the Tenant for what was, in essence, their own breach of s. 26 of the *Act* in that timeframe.

- I find that the Tenant's ability to use the kitchen for food preparation, or dining area/living area in the rental for eating, was not interrupted to any extent. Without proof thereof, there is NO compensation of any kind for outside meals they paid for. I find the Tenant is simply exaggerating the impact of the work.
- Similarly, I am not satisfied that the Tenant had to stay elsewhere with a friend during this time, nor that this alternate accommodation even cost them anything. The Tenant provided no proof in the form of some invoice that a short-term stay with a friend actually cost them anything. I find this piece of the Tenant's claim is purely specious; therefore, I grant NO compensation to the Tenant for this.
- Similarly, there is NO compensation to the Tenant for their air travel to a different province in this timeframe. I find on the balance of probabilities that the Tenant's travel elsewhere for a brief period had nothing to do with any of the work in the rental unit, work that I find had no impact on the Tenant's quiet enjoyment and everyday use of the rental unit to the fullest extent possible.
- The Tenant presented no proof of the increase to their BC Hydro utility; therefore, I grant NO compensation to the Tenant for this.
- The Tenant presented no proof of a loss of income; therefore, I grant NO compensation to the Tenant for this amount which I find is also entirely specious, with no proof thereof. The Tenant did not even list dates they allegedly had to miss from work.

In conclusion, I dismiss the Tenant's claim in its entirety, without leave to reapply. I find the Tenant withheld rent without authorization and made this Application in an attempt to have that manoeuvre justified. I find, in summary, that the Landlord did not violate any part of the *Act* or tenancy agreement; therefore, there is no compensation of any kind to the Tenant on this Application.

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

Conclusion

In line with my findings above, I dismiss the Tenant's Application in its entirety, without leave to reapply.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 5, 2023

Residential Tenancy Branch