

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- A Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- An order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

This hearing also dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

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Service of Notice of Dispute Resolution Proceeding (Proceeding Packages)

I find that the Landlord is deemed served with the Proceeding Packages on September 2, 2024 and September 10, 2024.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

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Issues to be Decided

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Is the Tenant entitled to an order requiring the Landlord to comply with the Act,

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on December 1, 1999, with a monthly rent of \$795.00, due on first day of the month.

The Tenant filed two applications the first seeking monetary compensation of \$30,160.00 and for the Landlord to comply with the Act, regulation and/or tenancy agreement and the second seeking monetary compensation of \$32,160.00.

First Application

Monetary Compensation

The Tenant is seeking \$15,000.00 in compensation for damages for the Tenant's living conditions and \$15,000.00 for punitive damages.

The Tenant's position is that the Landlord has not complied with their obligation to provide a rental unit that complies with health, safety and housing standards under section 32(1) of the Act. The Tenant argued that the Landlord was informed of repairs that were needed since 2015, but no repairs were done until 2023. The Tenant argued that some repairs were done in 2023, but they were just patchwork and were not done to an acceptable standard. Some photographs were provided of the Tenant's bathroom. The Tenant was asked to explain how they came to the amount of \$15,000.00 in compensation and the Tenant argued that no amount of money could compensate for how their dignity was impacted living in these conditions. Photographs were provided of the bathroom of the rental unit. The Tenant argued they are also seeking \$15,000.00 in punitive damages because the Landlord has not met their legal obligations and to act as a deterrence.

The Landlord's position is that the Tenant is uncooperative in the Landlord's effort to make any repairs and that the Tenant has never made a maintenance request. The Landlord's agent MC (the Landlord's Agent) argued that the repairs to the rental unit are beyond reasonable wear and tear and require the rental unit be vacant to complete the repairs. The Landlord's Agent argued the Tenant has been offered multiple times to move to a hotel or a respite unit or transfer units so that the necessary repairs can be completed; however, the Tenant has denied every offer and will not cooperate.

The Landlord provided a letter dated August 2, 2024, which states “[employee name] and I, offered you a respite unit to live in while your unit is being renovated. You insisted that you will not be moving out of the unit. Considering the current state of your unit, it is not feasible to have construction working there while you occupy the unit”. Additionally, the Tenant’s evidence includes an email from the Landlord from April 30, 2024, and states the Tenant was offered “an internal transfer” by an employee of the Landlord.

The Landlord’s Agent also argued the Tenant has removed smoke detectors and taped the bathroom vent shut. A letter dated August 2, 2024, which was submitted into evidence, indicated that an inspection took place on July 30, 2024, and notes it was observed during the inspection that the smoke detector and bathroom vents were covered with tape.

Comply

The Tenant argued they want the Landlord to comply with their obligations under section 32(1) of the Act and to replace the entire rental unit.

The Landlord’s position is that the Tenant will not cooperate to allow any repairs to be made.

Second Application

Monetary Compensation

The Tenant is seeking \$20,000.00 in compensation for damages for the Tenant’s loss of quiet enjoyment and \$12,000.00 for punitive damages. The Tenant’s position is that they have made noise complaints about other tenants in the building and the Landlord has done nothing to address these concerns. The Tenant argued they can hear water running in the next-door rental unit, loud rap music and other noise disturbances throughout the night. The Tenant argued they believe they are entitled to more than the \$20,000.00 they are seeking, and no amount of money can compensate for the suffering they have faced. The Tenant’s witness GJ (the Tenant’s witness) testified that they could hear the water running and provided a witness statement about the noise and condition of the rental unit. The Tenant argued they are also seeking \$12,000.00 in punitive damages because the Landlord has not met their legal obligations.

The Landlord’s position is that after investigating the Tenant’s noise complaints it came to light that the only issue tenants are having is with the Tenant. The Landlord’s Agent argued no other tenants on the floor have experienced any issue with noise and most of those tenants complained about the Tenant’s behaviour. The Landlord’s Agent argued it is a wood frame building that was constructed in 1968 so there is nothing that can be done about the fact that the Tenant can hear the water running in other units. The Landlord’s Agent also argued the Tenant was offered to transfer units and has declined. As stated above an offer was made April 20, 2024, for the Tenant to do an internal transfer.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

To be awarded compensation for a breach of the Act, a tenant must prove:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

In regard to the compensation for loss of quiet enjoyment, I find that the Tenant has failed to prove the Landlord has not complied with the Act. The Tenant did not submit sufficient evidence to substantiate the complaints, for example a video or audio recording. Additionally, no other tenants in the residential building have complained about any noise coming from the neighbouring tenant. A Landlord must balance the rights of both parties involved in a noise complaint and without any evidence to substantiate the complaints, I find that the Landlord took the appropriate steps to address the noise complaints. I will also note that the residential building is an older, wood building which adds to the amount of noise that travels.

I also find that the Tenant has failed to prove the amount or value of the loss for both monetary compensation claims. Insufficient evidence was provided to prove that the value of the loss or damage was \$15,00.00 and \$20,000.00. Additionally, I find the Tenant has failed to act reasonably to minimize any damage or loss. In respect of both claims, I find that the Tenant was offered a respite unit or to transfer units, which would resolve the issue of repairs and the dispute with the other tenants; however, I find that the Tenant has declined those options. Furthermore, the Tenant has argued these issues have been going on since around 2015 and 2019; however, the Tenant took no steps to file an application requesting repairs or for the Landlord to address the noise complaints until 2024. Based on the above, I find that the Tenant has failed to show they acted reasonably to minimize any damage or loss.

Policy Guideline #16 states that any amount of compensation “must not include any punitive element”. As such, I decline to award the Tenant any amounts for punitive damages.

Based on the above, I dismiss both the Tenant’s applications for compensation, without leave to reapply.

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

Section 62 of the Act states that an arbitrator may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Under section 32(1) of the Act a landlord has an obligation to provide and maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standard required by law. In this case, I find that the Tenant has not cooperated in allowing the Landlord to meet these obligations. For any repairs to be completed, the Tenant must cooperate in vacating the rental unit to allow for the repairs to be undertaken. Based on the evidence of both parties, I find that the Landlord has offered transferring the Tenant to a new unit, a respite unit and a hotel to allow the repairs to be undertaken; however, the Tenant has not accepted any of those offers.

I find that there is no evidence to support that the Landlord will not comply with their obligations under the Act if given access to complete the repairs.

For the above reasons, the Tenant's application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act is dismissed, without leave to reapply.

Is the Tenant entitled to recover the filing fee for the two applications from the Landlord?

As the Tenant was not successful in these applications, the Tenant's applications for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenant's application is dismissed 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 section 9.1(1) of the Act.

Dated: October 11, 2024

Residential Tenancy Branch