



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ONE WEST PROPERTIES CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 20 minutes. The phone lines were left open for the party to call in to the teleconference for the full duration of the hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served the landlord with their application for dispute resolution dated April 14, 2018 and evidence by registered mail sent on that date. The tenant provided a Canada Post tracking number as evidence of service. Based on the evidence I find that the landlord was deemed served with the tenants' application and evidence in accordance with sections 88, 89 and 90 of the *Act* on April 19, 2018, five days after mailing.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

The tenant gave undisputed evidence regarding the following facts. This periodic tenancy began in July, 2017. The rental unit is a one-bedroom suite in a multi-unit

strata building. The monthly rent is \$1,850.00 payable on the first of each month. A security deposit of \$925.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at the start of the tenancy. The tenants remain in the rental unit at this time.

The tenant seeks a monetary award in the amount of \$6,175.00 for the following items:

Item	Amount
Ceiling Damage (July-Sept, 2017)	\$150.00
Interior Leak (Sept 19-Oct 18, 2017)	\$925.00
Ceiling Damage (Oct-Nov, 2017)	\$100.00
Exterior Damage	\$1,400.00
Loss of Income	\$3,600.00
TOTAL	\$6,175.00

The tenant submits that the ceiling of the rental unit has unsightly water marks in the bedroom. The tenant described the discoloration as noticeable but “not a big deal”. The tenant testified that the appearance of the damage impacted their ability to enjoy the rental unit.

The tenant said that on September 19, 2017 there was leaking from the ceiling which made the bedroom of the rental unit unusable. The tenant said that the leak originated in the common area of the rental building and acknowledged that the landlord did not cause or contribute to the water damage. The tenant reported the issue with the leak to the landlord on September 19, 2017. The tenant said that the landlord did not take action to address the water leak in a timely manner and that repairs were not performed until October 18, 2017. The tenant submits that while the leak was repaired, the ceiling remained unsightly until it was repainted by the landlord in November, 2017.

The tenant testified that the patio of the rental unit leaks when it rains making the patio unusable. The tenant said that the issue has been reported to the landlord but no repairs have been made.

The tenant seeks a monetary award for loss of income. The tenant said that when the leaks occurred the tenants had to move furniture out of the bedroom so that they would not be water damaged. The tenant submits that the time spent attending to their rental unit was time that they could have utilized to pursue business interests and they consequently suffered loss of income.

The tenant submits that as the landlord did not provide a condition inspection report at the start of the tenancy the landlord has extinguished their right to hold the security deposit for this tenancy pursuant to section 24(2)(c) of the *Act*. The tenant said that the tenancy is ongoing but they seek a return of the full security deposit for this tenancy.

Analysis

The tenants make a claim for a monetary award for damage or loss under the Act, regulation or tenancy agreement. The tenants make a claim for loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means a substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

Based on the photographic evidence submitted by the tenant as well as their testimony, I find that the watermark on the ceiling to be a minor blemish. The tenant said that it was noticeable but had little impact on their use of the rental unit. I find that the discoloration on the ceiling both before and after the incident of water ingress to be a minor issue that does not meet the standard for breach of quiet enjoyment as set out above. For these reasons I dismiss the portion of the tenants' application seeking a monetary award for the condition of the ceiling.

Based on the evidence I find that the water ingress was a solitary incident that was not caused or contributed to by the landlord. While the tenant said that they were inconvenienced for a period because the landlord failed to perform repairs in a reasonable time, I find that the discomfort was for a finite period of time, approximately one month. As outlined above a claim for loss of quiet enjoyment requires more than simply a temporary inconvenience. I dismiss the portions of the tenants' application seeking an award for loss of quiet enjoyment.

I find that the flooding has resulted in a loss in the value of the tenancy for tenant. Section 67 of the *Act* allows me to issue a monetary award for damage or loss. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

I accept the undisputed evidence that the leak in the rental unit caused some areas of the suite to be unusable for a period of time. The tenant said that the bedroom of the rental unit could not be used and that all of the furnishings were moved into the living area of the suite. As a result, the tenants were unable to use a portion of their rental unit for its intended purpose. While I find that the water damage has affected the tenant's ability to enjoy the full rental unit, there is undisputed evidence that the tenants continued to reside in the rental unit. .

I find that the rental unit was affected by the water damage but not to such an extent that the tenant was unable to reside in the unit. I find that the leaks affected the tenants' daily routine and ability to fully use the rental unit. Under the circumstances, I am issuing a monetary award which reflects that the tenants did suffer loss in the value of the tenancy agreement. Balancing the fact that the tenant was able to continue to reside in the rental unit with the tenant's evidence of the impact the loss of the use of the bedroom in a one-bedroom suite had, I find that an appropriate amount of damages for the tenants' loss in the value of their tenancy is \$370.00.

I base the amount of damages on the period of loss, from September 19, 2017 to October 18, 2017, approximately 1 month. I find that the loss of the affected area to have had the effect of reducing the value of the tenancy by 20%. I make this finding

based on the tenant's testimony regarding their use of the rental unit and alterations to their daily routine. Therefore, I find that a monetary award of \$370.00, equivalent to 20% of the full rent of \$1,850.00 for a period of 1 month to be appropriate in these circumstances.

I find that there is insufficient evidence in support of the tenants' application for damages caused by the outside patio. I find there is insufficient evidence that the tenants have suffered damage or loss as a result of the landlord's negligence or action. I find the photographs submitted to be insufficient to show that the patio is in need of repairs or maintenance. I dismiss this portion of the tenants' application.

I find there is insufficient evidence in support of the tenants' claim for damages for loss of income. Based on the tenant's testimony the leak to the rental unit was not caused or exacerbated by the landlord's actions or negligence. I find that there is little evidence that the tenants' loss of income was caused or contributed to by the landlord. Furthermore, I find that the tenants have submitted little evidence to show that they suffered any real loss or the monetary amount of the loss. As a result, I dismiss this portion of the tenants' application.

The tenant seeks a return of the security deposit but has testified that the tenancy is ongoing. I find that the tenant is not entitled to a return of the security deposit at this time. The tenant submits that the *Act* provides that the landlord is not entitled to hold a security deposit as they have not prepared a condition inspection report at the start of the tenancy. The *Act* does not authorize the tenant to a return of a security deposit during an ongoing tenancy.

Section 24(2) of the *Act* provides that the right of a landlord to claim against a security deposit for damage to residential property is extinguished if they do not complete a condition inspection report in accordance with the *Act* but it does not remove their right to hold and maintain it during the course of the tenancy. I find that the tenants' application is based on a misunderstanding of the *Act* and there is no basis for their claim. Consequently, I dismiss this portion of the tenants' application.

As the tenant's application was not wholly successful I decline to issue an order to recover the filing fee.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$370.00 representing the loss of the value of the tenancy.

As this tenancy is continuing, I allow the tenants to recover the monetary award by making a one-time reduction of their next monthly rental payment to the landlord.

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: November 8, 2018

Residential Tenancy Branch