Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order directing the landlord to comply with the Act, regulation or tenancy agreement. The Tenants also made a monetary claim of $3,255.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, due to the impact that re-piping renovations in the rental unit had on them. Finally, the Tenants applied to recover the $100.00 cost of their Application filing fee.

The Tenants, Y.T., R.R., and P.T., the Landlord, T.Y., and two agents for the Landlord, W.L., S.J. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants, the Landlord and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I reviewed the service of the Application, Notice of Hearing, and documentary evidence back and forth. The Agents said that they received the Application, Notice of Hearing, a USB stick, and a paper document describing what was contained on the USB stick from the Tenants; however, the Agents said that they could not open the USB stick. The Agents acknowledged that they did not let the Tenants know that they could not access their evidence in this regard. The Agents said that they sent their evidence to the Tenants via email, given the Covid-19 state of emergency, which the Tenants acknowledged having received. As a result, I advised the Parties that I would not be considering the Tenants' documentary evidence submitted to the RTB, since it was not properly before the Landlord, as required by the Act and the RTB Rules of Procedure.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, I asked the Agents for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agents advised me of the name of the property management company representing the owner, as well as the owner's name. Further, the Tenants identified in the tenancy agreement differ from those set out in the Application. As a result of these factors, I amended the Parties' names in the Application, pursuant to section 64(3)(c) and Rule 4.2.

Issue(s) to be Decided

- Are the Tenants entitled to an Order for the Landlord to Comply with the Act or tenancy agreement?
- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on December 1, 2015, with a current monthly rent of $1,485.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of $700.00, and no pet damage deposit.

The Landlord included a letter they received from the Tenants dated November 26, 2019, which details the impact the renovations had on the Tenants. This letter includes the following:

> Dear [Agent]:
> We have been renting an apartment from you since December 2016 [corrected to 2015 in hearing], and we have always paid our rent on time. We have been paying rent for the convenience of living here but next month will not be conveniant for us because of the repiping in the walls and in the ceilings, that are full of asbestos. This will be starting on Tuesday December 3rd, the day they will be breaking down the walls and the ceiling, so we will have to leave in the

> morning at 7:30 am and not return for 10 hours. The walls and ceiling will be left open. On the 2nd and 3rd days, we will not have water in the daytime. On the 4th and 5th days, They will turn off our water for 8 hours. On the 6th and 7th days, the water will be turned on but we will not be able to use the bathroom still because they will install the new materials and there will be a lot of dust and noise. On the 8th to the 11th days, They must come back and replace the removed insulation (asbestos) which will take at least 4 hours.

In subsequent paragraphs, the Tenants explained what would be happening in the rental unit for the rest of December. The Tenants noted the other inconveniences they faced in moving their belongings out of the way. They said:

> There is no storage in this building so we have been storing our belongings in the hallway closets in this apartment, not much room but we have been making it work.
> **. . .** We have already paid Decembers rent but we will not have a home. My mother is 72yrs old and can barely walk, my son has a disability and will have a hard time understanding why we can't be home. I have to stay home with them but none of us can use a bathroom for days and even more it is going to be December, no Christmas for us this year. Can you imagine how we feel? We have already paid Decembers rent but we have no home. I feel that we should have some form of compensation for our troubles as we did not ask for all of this to happen. The building will have new pipes, you will have the rent and we get to suffer for 4 weeks, this isn't fair. We were not given any warning at all until yesterday, if we had known months ago when [the contractor] knew and did not tell you, or us or anyone living in any of these buildings we would have had a chance to move or find accomidations for the month. We did not have the chance.
>
> Everything is so expensive. We foud the cheapest Motel that we could and we will have to stay there for the month. It will cost $678 a week plus tax.
>
> So on top of paying our usual rent, our Christmas gift this year will be paying a bill for a Motel for a month. Please do something for us. We are not demanding people, we just need what we already paid for.
>
> [reproduced as written]

In the hearing, the Tenants said they submitted evidence of what it cost the four of them to live elsewhere in December. They said they found accommodation at a homestay.

They read from the evidence, advising me that from December 2 – 5, 2019, it cost them $345.00. They said it cost them $1,260.00 for Dec 6 – 23, 2019, and $810.00 to stay in there for December 24 – January 2, 2020. The total cost in December was $2,415.00.

The Agent said that the Tenants were asked to carry insurance to cover this situation. The Tenants said they have contents insurance for the rental unit, however, it doesn't cover the costs they incurred in finding alternate lodging for December 2019.

The Agent pointed to the tenancy agreement that includes a clause entitled "INSURANCE (INCLUDING LIABIILTY)". This clause reads as follows:

> Tenants are advised to carry adequate insurance coverage for fire, smoke, and water damage and theft, on their own possessions, and may be held liable for accidental injury, accidental damage, or accidental breakage arising from the Tenant's abusive, wilful or negligent act, or omission, or that of their guest's in their use of the Landlord's services and property. Additionally, a Tenant must carry adequate third party insurance if there is container in the premises containing more than twenty-five litres of any liquid. (Examples of such containers would be fish tanks or waterbeds)

In the hearing, the Tenants said:

> We have insurance, but it only covers our furniture or our belongings. If there was a fire, it would be different. It was not a theft, it was not a fire. . . this is something we were not warned about, as they said we were warned. The paper doesn't say anything like that.
>
> Somebody came in October, but they came for the rats. There was nothing about demolishing our walls and ceiling. If we had been warned at the very beginning of November, we would have had a chance. You can move now, but in a few days, you cannot find another place and move your belongings. We emailed them to have another apartment in another building, but they said there was no way to do it. They didn't seem to really care much. My daughter told them too, why didn't you warn us…. My neighbours didn't know either, until the last minute on November 26 – they didn't know what was happening.
>
> On November 25 we got notice that they were coming in on the 26th. On November 26 they gave us a notice saying they were going to come in on December 2nd and 3rd, a notice to enter. They walked around our apartment at

> the end of November to show us which walls they were going to make holes in. This was the worker that told us that. They thought we already knew how much work they were going to do. They didn't send us a letter in the mail or nothing. That's when we were told that we would have to move out of the place, and we couldn't believe it. Around the 23 of December, we came back, and they said it won't be until the beginning of January.
>
> We didn't complain, at least we can still live in the apartment. It had to happen around Christmas. We're not big babies asking for our pain and suffering. The ones who's responsible should have to pay for our costs.

The Agent said:

> I'm hoping to refer back to page four of our evidence; the notice is really straightforward. The second paragraph gives the schedule. They had mailed it to the Tenants as well, and we sent it through email – see page six for email trail, and page two demonstrates that the Tenant had received these notices.

Page six of the Landlord's evidence contains an email from the owner to the Tenant, Y.T., dated November 25, 2019 at 11:02 a.m., which states:

> We are currently waiting for strata's further detail about the schedule of current contraction, and will get back to you asap.

In her response, dated November 25, 2019, the Tenant, P.T., said:

> Thank you. Please phone us when you can because I won't be able to check our PC most of today and we have ancient cell phones that don't have internet. Thank you.
>
> [emphasis added]

The Agent also pointed to an email between from the Agent to the Tenants dated November 26, 2019 at 1:11 p.m. that states:

> Please see attached schedule for Nov 29, Dec 2 and Dec 3.
>
> Per mentioned, they have to deliver them to you in person. We have forwarded your request to owner to consider, however, please also discuss with your tenant insurance.

> If you would like to move, we can provide you a mutual agreement to vacate or an addendum for you to move back after construction done.

In their Application, the Tenants said:

> Since none of this was for emergency repairs, now we are wondering if they did know and they didn't warn us that [the contractor] was going to do this because they didn't want us to move out because the apartment was unliveable and unrentable for at least six weeks. Even to this date, it would not easily be rentable with all of the unfinished work that is left. We are still living here, and we don't mind waiting for them to complete their work. We continue to pay our rent.
>
> Even when we came back in the middle of January, there were still holes. We moved back in on January 14. We came back in the morning and they still had to paint, so we didn't come back until 4:30 – 5:00 p.m., so we had to spend the day doing something else. And then our phone jack wasn't hooked up, and there were still holes in the ceiling. They finished the tub tiles on March 20. In the meantime, we couldn't live like normal. We couldn't leave anything in the bathroom.

The hearing took place on April 28, 2020.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties gave testimony in the hearing, I explained how I would be analyzing the evidence presented to me. I told them that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. I advised them that Policy Guideline 16 ("PG #16") sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenants must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenants to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenants did what was reasonable to minimize the damage or loss.

Further, PG #16 addresses the criteria for awarding compensation for claims.

A. LEGISLATIVE FRAMEWORK

Under section 7 of both the *Residential Tenancy Act*:

- a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and
- the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Under section 67 of the *Residential Tenancy Act*, if the director determines that damage or loss has resulted from a party not complying with the Act, the regulations or a tenancy agreement, the director may:

- determine the amount of compensation that is due; and
- order that the responsible party pay compensation to the other party.

B. DAMAGE OR LOSS

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- loss of access to any part of the residential property provided under a tenancy agreement;
- loss of a service or facility provided under a tenancy agreement;
- loss of quiet enjoyment (see Policy Guideline 6);
- loss of rental income that was to be received under a tenancy agreement and costs associated; and
- damage to a person, including both physical and mental.

C. COMPENSATION

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.

[emphasis added]

I find that as a result of the Landlord's re-piping work in the rental unit in December 2019, the Tenants were unable to use the space for which they had paid the Landlord rent in December 2019. I find that the Tenants also incurred further disruption in the rental unit from the finishing of this work in January through to the end of April 2020. I find that this amounts to a breach of the tenancy agreement, by depriving the Tenants of their access to the living space they rented for the month of December 2019.

The Agent suggested that the Tenants should have used their own insurance to cover the cost of this breach; however, I find that the insurance clause in the tenancy agreement "advises" tenants to obtain insurance. Further, the recommended insurance coverage in the tenancy agreement does not address the situation facing the Tenants in this matter. Accordingly, I find that the Tenants did not fail to adhere to the tenancy agreement in terms of their insurance coverage.

Based on the evidence before me overall, I find it more likely than not that the Tenants were not given any notice of the construction work prior to the end of November 2019. I find that the emails the Agent pointed to as evidence of prior notification do not, in fact, provide evidence of anything more than late November notice of the impending construction work to start in early December 2019.

I find that the Tenants did their best to mitigate the costs they were required to incur, by reserving space in a "homestay", rather than a more expensive hotel. I find that the Tenants were at a disadvantage in this regard, because the work was done during the holiday season. I find that common sense and ordinary human experience indicate that finding short term rental accommodation at this time of year would be very difficult – the options open to the Tenants on such short notice would be limited.

I further find that the Tenants continued to have the disruption of their living space up to at least March 20, 2020, when they said that the workers finished the bathtub tiles.

I find that the Landlord was responsible for the Tenants not being able to stay in the rental unit for most of December 2019, for which they had paid the Landlord a full

month's rent. I find pursuant to section 7 of the Act, that the Landlord has not complied with the tenancy agreement by preventing the Tenants from using the services and facilities they had paid for in December 2019, and parts of January and February 2020.

As a result, I award the Tenants with recovery of their cost for the homestay of **$2,415.00**. I also award the Tenants with a reimbursement of half a month's rent in the amount of **$742.50**, due to the ongoing disruption of their right to quiet enjoyment of the rental unit up to the date of the hearing on April 28, 2020. These awards are made pursuant to sections 7 and 28 of the Act.

Finally, given the Tenants' success in their Application, I also award them recovery of the **$100.00** Application filing fee, pursuant to section 72 of the Act. I grant the Tenants a Monetary Order from the Landlord in the amount of **$3,257.50**, pursuant to section 67 of the Act.

Conclusion

The Tenants are successful in their Application, as the Landlord failed to comply with the Act and tenancy agreement, by depriving the Tenants of access to their rental unit from December 2, 2019, through to January 14, 2020. Further, the Landlord's re-piping project continued disturbing the Tenants' right to quiet enjoyment of the rental unit through to April 2020.

The Tenants are awarded a Monetary Order from the Landlord in the amount of **$3,257.50**, pursuant to section 67 of the Act. This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: May 20, 2020

Residential Tenancy Branch