Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 18168 Holding Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC, RR, FFT

Introduction

The tenant filed an application for Dispute Resolution (the "Application") on July 6, 2020 seeking the following:

- a monetary order for loss or compensation;
- an order that reduces rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord comply with the *Residential Tenancy Act* (the "*Act*") the regulations and/or the tenancy agreement;
- reimbursement of the filing fee.

The matter proceeded by way of a hearing on August 7, 2020 pursuant to section 74(2) of the *Act*. In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

The tenant and the landlord both attended the hearing, and I provided each with the opportunity to present oral testimony. In the hearing, the landlord confirmed they received the notice of this hearing and the tenant's evidence via registered mail.

Preliminary Issue

At the outset of the hearing, I determined that one piece of documentary evidence that the tenant prepared for the hearing was not stored in the Residential Tenancy Branch hearing management system. In discussion with all parties, the landlord verified that they received the same piece of evidence the tenant was referring to and describing. They had the chance to review it, and then provide statements in response to its contents in the hearing.

The hearing did not commence until the issue of evidence in the Residential Tenancy Branch hearing management system was resolved. The tenant attempted to upload this document to the system in the hearing but was unsuccessful.

I provided the tenant until mid-afternoon the day of the hearing to upload the document into the system. I asked the landlord to do the same to ensure both parties were reviewing the same evidence that would be provided to me.

After the hearing the tenant provided the document to the system, and the landlord did the same. I find the document was submitted in a timely fashion on the day of the hearing and I consider its contents in my decision below.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for loss or compensation pursuant to section 67 of the *Act*?

Is the tenant entitled to an order that the landlord comply with the *Act*, the regulations and/or the tenancy agreement, pursuant to section 62 of the *Act*?

Is the tenant entitled to an order that reduces the rent for repairs, services, or facilities agreed upon but not provided by the landlord, pursuant to section 65 of the *Act*?

Is the tenant entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenant provided a copy of the tenancy agreement for the rental unit. Both parties signed the agreement on April 6, 2019 for the tenancy starting on May 1, 2019. The rent amount agreed to is $2,300.00 payable on the first of each month. The tenant paid a security deposit of $1,150.00 on April 7, 2019 and a pet damage deposit of $1,150.00 on June 15, 2019.

The tenant presents that work began for a “mandatory building renovation” in 2020. In January, the tenant received information about the upcoming renovation, and then made enquiries on their own in later February. This required contact from the building manager, and by March 2 the building manager offered to explain the scope of the project to the tenant. By April 30, 2020, the tenant made further inquiries on the progress.

On June 3, 2020 more specific details about the project were provided to the tenant. This required the tenant to move belongings from the washroom, another closet, items in the pantry and “all around [their] counters in the kitchen”, as well as emptying of the bedroom closet.

At that time, the tenant stated: “The quiet enjoyment of the space is absolutely being taken away for the next month. . .” The tenant also stated: “I’d like to discuss a fair and reasonable rent reduction for the month, as the inconveniences. . .are severely impacting the use of the space.”

The tenant made a further request to the landlord for rent reduction on June 8. They provided photos of the work in the unit to the landlord. These photos show areas affected in the kitchen, bathroom and closet space. On June 22 the tenant explained in a further message that they “have not been able to live in [the unit] during this renovation. . .staying at a friend’s place during this month” and a roommate “doesn’t even have use of the apartment during the day”.

The landlord replied on June 29, 2020 to state they spoke with the building manager and contractor who “say that there has been no interruption that made the unit not usable.” The landlord stated, regarding work time in unit and clean up: “you can understand the very different information we have been getting.” In reply to this, the tenant noted they were applying for dispute resolution at the Residential Tenancy Branch. On June 29 the tenant also set out a list of points they were making to the RTB. These are: lived elsewhere for 20 days; missing 4 days of work; cleaning for two full days; a daily rent value for “loss of the quiet enjoyment and use of the space”; daily costs for eating out. The dollar amounts stated in that email total approximately $7,000.00.

The tenant also provided an account of the impact of the work from their roommate’s perspective, as well as that of a neighbour.

On their Application, the tenant made a twofold request for monetary compensation. These are: compensation for food expenses; and displacement. Adding to this on a monetary worksheet on July 16, the tenant added reimbursement for cleaning expenses and missed workdays. They set this out on a worksheet, as follows:

	for	receipt/estimate	$ amount
a)	missed workdays	quantified estimate	824.68
b)	cleaning	quantified estimate	540.00
c)	displacement	quantified estimate	2722.32
d)	meal compensation	quantified estimate	2880.00
	filing fee	receipt	100.00
	registered mail	receipt/online quote	24.54
		TOTAL	$7,091.55

Details are:

a) The tenant measured workdays with reference to the direct deposit wage that makes a rate of $206.00 per day, for four missed workdays.

b) The tenant measured cleaning amounts by use of an hourly amount that a cleaner would charge, at $30.00 per hour for 18 hours. This is: "approximately 16 hours of my time (2 days at 8 hours) and 2 hours for a cleaner to finalize. . "

c) Displacement is measured using the amount of monthly rent. Over the span of 36 days in total, a calculated daily value of $75.62 is equal to $2,722.32. These dates "June 4 to July 9th are the dates this renovation is anticipated to take to complete."

d) Meal compensation as a quantified estimate is from "[s]peaking with a Residential Property Manager. . .[who] said $60/day is reasonable per person." For the tenant, this total amount listed is for 24 days for 2 people, with their roommate.

In the hearing, the tenant stated they had difficulty communicating with the landlord. Their emails did not receive a favourable response, and this means the landlord "[doesn't] pay attention to the property." During the project, they obtained information about the project disruption and its scope from other tenants in the building. Additionally, they received information from contract workers. They stated: "I have gone above and beyond to seek information."

The landlord supplied the following documentation:

- answers to tenant's concerns:
  - building occupants were notified by use of a whiteboard on progress ongoing;
  - the building manager told them that no other tenants had concerns;
  - the tenant was informed in March about upcoming work;

    - on one day the contractor “missed closing up the wall completely that day” and resolved it the following day;
    - total project days were 11, with some days only partial;
    - the kitchen was “fully able to be used during the project”;
    - a fair amount, at 50% rent reduction for 11 days, is $515.91
- a list of days of work in the unit from the contractor: 11 days total including an initial visit that was “for 10 minutes”;
- an email relayed from the property management company attaching whiteboard display updates – a picture of a whiteboard detailing the work for the week of June 22 is attached;
- a message dated March 2 offering a March 23 meeting to provide “updates on the scope of the work”.

In the hearing, the landlord stated that the tenant had a “personal visit” with the property manager. The contractor puts the information in the elevator and on a whiteboard. They stated the tenant sent them pictures; however, they were not present and had to hear about the situation from the property manager.

The property manager resides in the building and speaks to the contractor regularly; therefore, that person was fully informed about the stages of the project. They stated: “every time the tenant asked, we responded to her and followed up with the property manager” and “we called [the property manager] so many times and asked them to check with [the tenant]”.

The landlord provided in the hearing that they were getting different pieces of information from each of the tenant, the property manager and the contractors. This was “radically different”. They reiterated that they responded to the tenant from the beginning of June to July.

The tenant did not accept the landlord’s compensation proposal of 50% rent reduction for 11 days total work time in the unit, at $515.91.

Analysis

Under section 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. Section 65 grants authority to make an order granting a rent reduction:

65 (1)Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if the director finds that a landlord or tenant has not

complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

(f)that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

On their Application, the tenant made a twofold request for monetary compensation. These are: compensation for food expenses; and displacement. Adding to this on a monetary worksheet on July 16, the tenant added reimbursement for cleaning expenses and missed workdays.

Under section 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 section 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.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish 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.

When evaluating the tenant's submissions and evidence, I find the amounts listed in the monetary order worksheet, based on the tenant's calculations, are not quantified. While the tenant labels each entry as a "quantified estimate" I find it difficult to prove damage or loss, or the value thereof, based on these calculations.

I make findings on each of the items a) to d) from the list above as follows:

a) The tenant did not give sufficient detail on this item to establish that damage or loss exists. From this, I cannot establish that missed workdays resulted from the actions or inactions of the landlord. The tenant did not provide which days were missed. This is not reflected in a pay record. The tenant has provided the name of her employer in the evidence; however, there is no information on what short-term illness plan is in place with the employer. In sum, I am not satisfied sick days from work represent an actual

damage or loss; the evidence is not detailed. I award no compensation for this claimed item.

b) For cleaning, the tenant stated it was “16 hours of [their] time” though as above did not name the exact timeframe or on which days they undertook cleaning. Moreover, a “final clean” is not described as distinct from the tenant’s own cleaning and it is not established that this “final clean” actually happened. The tenant did not provide specifically what cleaning entails; there is no itemized list of cleaning undertaken. The photos show coverings of dust and the tenant did provide a photo of a used floor swifter; however, I am not satisfied the value of this portion of the claim is established from the evidence.

c) For displacement, I find the landlord evidence is sound on the number of days that work was completed in the unit: this is eleven days. The contractors provided this to the landlord directly. The tenant states this is inaccurate; however, they did not present evidence that outweighs that of the landlord on this point. I find it is rational that contractors would keep track of each unit work, as a measure of progress. The whiteboard use also shows this.

The tenant stated, in their dispute evidence summary, that they “had to move out for the majority of the renovation” to a friend’s place. I find this does constitute an impact and represents a loss of use of a portion of the unit. Insofar as the tenant’s payment for rent in this month was infringed upon by work undertaken, my measure for an award here is the degree to which the tenant has been unable to use the unit.

At the same time, I balance this against the landlord’s efforts to minimize disruption in the unit. The landlord presented that there were meetings with the property manager, and I find their evidence credible that they answered the tenant’s queries in a timely fashion while also consulting with the contractors and property manager on concerns. I give weight to the evidence of the whiteboard posted showing progress throughout the building; it also shows the scope of the work project in a building with at least 20 floors of units. In addition, I find the property manager, though not providing evidence for the hearing, was present to oversee the project and availed themselves of the tasks focusing on communication.

The evidence shows the tenant did raise the subject of a rent reduction relatively early when the process began. As early as February, the tenant was raising the topic of “the impact of this project and on our use of our rental space.” I find the landlords did not reply to this line of inquiry from the tenant directly; however, at the same time I

appreciate the impact of the project and different strings of communication that were running concurrently. I trust that this hearing has now brought the issue to the forefront.

I limit this portion of the award to the days when work was undertaken in the unit. I find these are the days that caused true displacement within the whole timespan of work within the unit. I find the work created a loss of quiet enjoyment in that it significantly interrupted the tenant's day-to-day functioning and full use of the unit. I conclude it is an infringement on the tenant's right to quiet enjoyment, though not through any wilful or careless act of the landlord.

On June 3, the tenant stated to the landlord in email: ". . .the inconveniences stated above are severely impacting the use of the space." I find this is an accurate summation of the situation: a matter of inconvenience, with a larger impact on the tenant. The invasive work was frequent, though not ongoing in a manner that put the tenant's life into disarray on a daily basis throughout June and into July as claimed.

As such, I limit an amount of rent reduction to the days when the tenant's use of the unit was interrupted whereby they had to prepare for workers' entry, grant everyone space to complete the work, then assess and ensure an adequate clean-up.

Balancing the landlord's need for repair to the unit -- which in and of itself requires an interruption to the tenant's daily use of the unit that is provided in the tenancy agreement -- I find the landlord's offer of one-half of daily rent amount for each of the eleven days is a fair offer. I so award this amount of $515.91 as rent reduction to the tenant.

In sum, I find access and use was not severely limited over the entire timespan of the project; however, I do find there was a significant interruption on the actual workdays in the unit. I am not satisfied there was a loss of access to any part of the kitchen provided under the tenancy agreement.

d) I find there is not sufficient evidence to show the kitchen was unusable. There is nothing showing a bar to entry; nor is there evidence that shows directives to the tenant to not use the kitchen. Photos show work on a wall in the kitchen and a collection of dust; however, I am not satisfied this shows a level of work that intrudes on the tenant's ability to use the kitchen.

Moreover, the cost of eating out is not established. The $60 per day is not sourced by any authoritative guide. Compared to actual proof of costs incurred, what the tenant

provided as evidence for this portion of the claim is a very rough estimate. There are no receipts to show expenses. Further, I find eating out does not show any steps to mitigate the damage or loss for this claim.

The tenant is the party to the agreement. Therefore, even if loss were measurable for this claim, the roommate's expenses with eating out are not those which link back to the landlord's obligations under the tenancy agreement.

For these reasons, I award no compensation for this claimed item.

The *Act* does not provide for recovery of other costs associated with serving hearing documents – therefore, the cost of registered mail is not recoverable.

As the tenant was successful in this application, I find the tenant is entitled to recover the $100.00 filing fee paid for this application. I authorize the tenant to withhold the amount of $100.00 from one future rent payment.

Conclusion

I find the tenant is entitled to a rent reduction in the amount of $615.91. This includes both the future rent reduction and recovery of the filing fee. I authorize the tenant to withhold this amount from one future rent payment.

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: August 28, 2020

Residential Tenancy Branch