



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding apm property management and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The named corporate respondent was represented by its agent (the "landlord").

As both parties were present service was confirmed. The parties each testified that they were served with the respective materials. Based on the testimonies I find the parties each served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord submitted that they are not the appropriate party to be named as respondent as they merely act as agents for the corporate entity identified in the written tenancy agreement as the landlord. The tenant expressed confusion regarding the relationship between the corporate entities and declined to amend their pleadings to add or replace the named respondent.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in 2017. The current monthly rent is \$1,705.00 payable on the first of each month. The rental unit is a ground-level suite in a multi-unit rental building managed by a strata corporation. The named respondent is a corporate entity that has been retained by a landlord identified in the written tenancy agreement to manage the rental unit on their behalf.

On April 2, 2020 the rental unit suffered water damage from leaks in an upper floor suite. As a result the tenant was unable to occupy the rental unit and vacated to reside in a hotel while emergency repairs were undertaken. The tenant reported the issue to their home insurer who arranged for and paid the cost of the hotel stay and removal and storage of personal items from the rental suite.

On or about April 21, 2020, the tenant was advised by their home insurance carrier that they would no longer cover the cost of housing outside of the rental unit and that they should return to the rental unit. The insurance carrier advised that while they understood repairs to be incomplete, there was access to a single bedroom, single bathroom and kitchen which under their policy made the suite inhabitable. The parties agree that repairs had not yet been completed at that time and there was a significant portion of the 2 bedroom and 2 bathroom suite that could not be used. The tenant submitted into evidence multiple photographs showing the condition of the suite during ongoing work. The landlord testified that they did not advise the tenant they could or ought to reside in the rental unit while construction was ongoing.

The tenant resided in the rental unit from April 21, 2020 to approximately June 20, 2020 when they again vacated the suite while some additional work was performed. The parties testified that the rental unit has been fully repaired.

The parties gave evidence that they explored the possibility of alternate accommodations, but the landlord had none available that was appropriate for the tenant's medical condition. The parties agree that the tenant paid full rent for each month of the tenancy. The landlord has reimbursed the tenant the equivalent of 2 month's rent.

The tenant seeks a monetary award in the amount of \$850.00, approximately half of the monthly rent paid and not yet reimbursed, when they resided in the rental unit despite its deficiencies.

Analysis

Section 2 of the *Act* defines a landlord as:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- ...
- (d) a former landlord, when the context requires this;

Based on the testimony of the parties I am satisfied that the named respondent is the agent of the party identified as the landlord on the written tenancy agreement, who exercise their power to manage the property and perform duties under the Act, tenancy agreement and service agreement. I therefore find that the named respondent is a landlord as defined under the *Act*.

The tenant seeks compensation for loss in the value of the tenancy due to the water damage and ongoing restoration work during the period when they resided in the rental unit. Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. 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 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.

Section 32 (1) of the Act states that:

A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Residential Tenancy Act Regulations Schedule 8, in relevant part, states:

8 (1) Landlord's obligations:

- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.

In the matter at hand, I find the above legislation effectively states a landlord is responsible for the condition of the rental unit including aesthetics, reasonable functioning or lawful compliance with health, safety and housing standards.

I accept the undisputed evidence of the parties that during a period of several months starting in April, 2020 the rental unit suffered water damage and was undergoing repairs and maintenance work. I accept the evidence that the ongoing work limited the tenant's ability to use the full rental unit including being unable to use one bathroom and one bedroom. I further accept that the nature of the damage and work meant that the rental unit was in a state of disrepair so that the tenant was constantly aware of the deficiencies in the suite.

The tenant testified that they were able to reside in the rental unit for a period of time from April 21, 2020 for approximately 2 months until June, 2020. I accept the evidence by way of the tenant's testimony and photographs that the nature of the deficiencies were such that the tenant was constantly aware of the need for repairs and required to alter some of their daily routines such as limiting their use of to certain areas, but not so severe that the rental unit is uninhabitable. The deficiencies were unavoidable in the tenant's daily life but were surmountable.

The landlord suggests that the tenant voluntarily continued to pay rent for the duration of the repairs and chose to reside in the rental unit, therefore any loss suffered is a result of the tenant's failure to mitigate damages. I do not find the landlord's submissions that they are not responsible for the tenant's discomfort to have any merit. It is undisputed that the tenant was unable to find residence outside of the rental unit as their policy of insurance could not provide alternate accommodations. The parties

further agree that the landlord was unable to provide another suite that accommodated the tenant's medical condition. While the landlord submits that they did not authorize the tenant to occupy the rental unit they provided no appropriate alternatives. I find that it is not open for the landlord to shirk their contractual responsibility to provide a rental unit in a state of repair for which the tenant has paid the full rent.

I accept that the tenant was unable to use approximately half of the rental unit comprised of a second bedroom and bathroom. I further accept that the ongoing construction was noticeable, aesthetically displeasing and significantly decreased the tenant's ability to enjoy the rental unit. Based on the evidence I find that an appropriate loss in the value of the tenancy resulting from the ongoing water damage and repairs to be 50% of the monthly rent.

In accordance with section 65(1)(f) of the Act, I issue a one-time retroactive monetary award in the tenant's favour in the amount of \$850.00 to compensate the tenant for the loss in value of the tenancy stemming from the landlord's failure to provide a rental unit in a state of sufficient repair or appropriate alternate accommodations.

As the tenant was successful in their application they are also entitled to recover the filing fee from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$950.00. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: October 23, 2020

Residential Tenancy Branch