



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIVE MILE HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, MNDCT, OLC, FFT

Introduction

On April 30, 2021, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking to reduce rent for repairs, services, or facilities agreed upon but not provided. The Tenants also applied for the Landlord to comply with the Act, Regulation, or tenancy agreement, and for a monetary order for money owed or compensation for damage or loss.

The matter was scheduled as a teleconference hearing. The Tenants and the Landlord’s agent (“the Landlord”) attended the hearing. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They provided affirmed oral testimony and were given an opportunity to make submissions during the hearing. The parties were informed that recording the hearing is not permitted.

The parties confirmed that they exchanged the evidence before me and had an opportunity to consider and respond to the evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The initial hearing on September 2, 2021 was adjourned and the applicants were ordered to provide a monetary order worksheet providing the full details of their monetary claim to the respondent and to the Residential Tenancy Branch.

Issues to be Decided

- Are the Tenants entitled to a reduction of rent?
- Are the Tenants entitled to money owed or compensation for damage or loss?

Background and Evidence

The Landlord and Tenants testified that the tenancy began on July 7, 2006 as a one-year fixed term tenancy which has continued thereafter on a month-to-month basis. Rent in the amount of \$3,005.00 is due to be paid to the Landlord by the first day of each month. The Tenants paid a security deposit of \$1,030.00 to the Landlord.

The Tenants and Landlord testified that the residential property is a multi unit building with eight floors and 92 rental units. The parties testified that the building was built back in 1959. The Landlord testified that there are 176 occupants living on the property.

The Tenants submitted that they have had concerns with the following issues:

1. Management of the apartment building.
2. Closure and Maintenance of roof top deck.
3. Smoking areas of building.
4. No heat /intermittent heat.
5. Cleaning and sanitation and ongoing maintenance.
6. Ongoing suite renovations.
7. Kitchen work.

The Tenants provided a monetary order worksheet identifying their claims as follows:

Document Number	Receipt / Estimate From	For	Amount
#1	Rent Increases: June 2018 - April 2021	Issue 1: Management bldg	\$5,599.00
#2	Rent reduction: April - August 2020	Issue 2: Roof-top closure	\$ 250.00
#3	Rent reduction: Dec 2020 - April 2021	Issue 3: Smoking Issues	\$250.00
#4	Rent reduction: Nov 2020, Feb-Mar 2021	Issue 4: No heat, int, heat	\$2,000.00
#5	Rent reduction: June 2018 - April 2021	Issue 5: Cleaning, maint.	\$ 2,000.00
#6	Rent reduction: 2020-2021	Issue 6: Excessive noise	\$250.00
#7	Cost estimate partially received	Issue 7: Kitchen work	\$2,152.64
#8	BC Hydro Bills	Hydro	\$ 47.66
#9			\$
#10			\$
Total monetary order claim			\$ 12549

Rent Increases June 2018 to April 2021

The Tenants testified that the level of maintenance for the residential property was not maintained by the Landlord between June 2018 to April 2021. The Tenants testified that they received a rent increase of \$112.00 per month effective June 2018 and a rent increase of \$73.00 per month effective June 2019. The Tenants are seeking to recover the full amount of the rent increases in the amount of \$4,440.00.

The Tenants testified that in 2016 there was a reduction of the number of managers taking care of maintaining the property. The Tenants stated that the assistant manager handles construction and renovations which reduces his ability to service/ maintain the rental property.

The Tenants stated that they are seeking compensation due to the restriction of service to the property, and they submitted that the Landlord has an obligation to repair and maintain the property. The Tenants stated that the Landlord has changed their complaint resolution process and is not responding to their complaints. The Tenants provided photographs taken throughout the residential property showing areas that they feel are unclean.

In reply, the Landlord provided testimony confirming that the Tenants received a 4% rent increase in 2018 and a 2.5 % rent increase in 2019. The Landlord testified that the rent increases were properly issued in accordance with the Act and Regulations.

The Landlord testified that the rent increases are not directly related to concerns about maintenance of the residential property as rent increases are permitted under the Act.

The Landlord testified that since 2012 there was only one manager on the property, and since then the structure of management has changed and there are now resident managers dealing with the day-to-day office work and maintenance requests. The Landlord also testified that they have a cleaner who comes to the property three days each week. The Landlord stated that the owner of the property does not consider additional staff to be necessary.

Rent Reduction Roof Top Closure

The Tenants testified that access to the common area /roof top deck closed in April 2020 and re-opened again in August 2020. The Tenants stated that the Landlord provided the rationale that the deck was closed due to covid 19 and health and safety

issues. The Tenants stated that they did not get any communication /signage about the deck from the Landlord until August 2020.

The Tenants are seeking compensation of \$250.00 for loss of use of the deck.

In reply, the Landlord testified that the rooftop deck was closed due to covid and was re-opened in June 2020 with sanitizer present and rules restricting the use of the deck.

Rent Reduction Smoking

The Tenants testified that in December 2020 the Landlord created a smoking area less than 6 meters from the entrances to the building. The Tenants testified that they often had to walk through smoke in order to access the building. The Tenants testified that they had to get city bylaw involved to resolve the smoking issue.

When asked to explain the claim amount, the Tenants stated that the \$250.00 is based on what the public fine system would be.

In reply, the Landlord provided affirmed testimony that the rental property does not permit smoking in the building or on the residential property. The Landlord provided testimony confirming that the Tenants called city bylaw about the issue.

The Landlord stated that they have no smoking signs up on the property and that they do not have a policy allowing smoking on the property. The Landlord stated that they have caught residents smoking on the property and on the roof top deck and issue breach letters to them. The Landlord provided a copy of a March 2021 letter sent to an occupant cautioning them that smoking is not permitted in the rental unit or on the property. The Landlord stated that they are unable to control the actions of people approaching the entrance of the building with lit cigarettes and this is an ongoing issue.

The Tenants replied that the issue is not being managed effectively by the Landlord and that management has created an un-official smoking area.

Rent Reduction Heat

The Tenants testified that the provision of heat is included in the rent. Heat to the rental unit is provided by hot water that runs through radiators. The Tenants testified that in November 2020 they went 10 days without heat. The Tenants testified that in February to March 2021 they had intermittent issues with the provision of heat. The Tenants testified that they believe the issue was with the boilers. The Tenants provided copies

of notices they received regarding heat interruptions /shutdowns dated March 17, March 22, and March 23, March 24, and March 26, 2021.

The Tenants testified that the Landlord did not treat the issue as an emergency. The Tenants testified that the Landlord provided them with two electric heaters in November 2020. The Tenants again used the two heaters in February and March 2021 when intermittent heat issues arose.

The Tenants are seeking compensation of \$2,000.00 for a loss of heat /value in the tenancy for which they paid rent for. The Tenants' documentary evidence provides that City By-law 5462 requires the Landlord to maintain every room at a temperature of 22E Celsius measured at a point 5 feet from the floor. The Tenants are seeking \$100.00 per day for the 10 days where they suffered a loss of heat in November 2020 and an additional \$1,000.00 for having intermittent heat in February and March 2021.

In reply, the Landlord provided testimony confirming that in November 2020 there was a problem with their main boiler. A contractor was called and attended the property on November 20 and November 21, 2020 and attempted to fix the problem. The Landlord stated that a boiler mother board part needed to be ordered.

The Landlord stated that the main boiler was broken; however, the other two smaller boilers were working. The Landlord stated that they informed tenants about the boiler issue and offered them heaters if they required additional heat. The Landlord provided copies of letters dated November 22, November 24, November 26, 2020, and March 10, 2021 sent to occupants explaining the heating issue and the availability of portable heaters.

The Landlord stated that the main boiler had to be replaced so they rented a satellite boiler which was hooked on November 26, 2020 and used until the new boiler was installed on February 28, 2021. The Landlord confirmed that some Tenants complained about intermittent heat while the new boiler was being connected and these tenants were again provided with electric heaters. The Landlord stated that by March 26, 2021 all the boilers were working/ providing heat.

Rent Reduction Cleaning and Maintenance

The Tenants are seeking compensation from the Landlord for what they described as the Landlord's failure to sufficiently clean the residential property between June 2018 and April 2021. The Tenants noted that this period includes the covid 19 pandemic.

The Tenants are seeking compensation of \$2,000.00

The Tenants were asked to clarify how this claim is different from the earlier claim where they were seeking compensation from the Landlord for a reduced presence of the Landlord on the property and less maintenance performed on the property. The Tenants confirmed this claim and stated that cleaning was insufficient when Covid began, and the Landlord failed to update communication notices to occupants. The Tenants stated that the Landlord breached the bylaw that requires them to clean the property.

In reply, the Landlord provided affirmed testimony that they have cleaning procedures in place and cleaning staff that attend the property three days per week. The Landlord stated that they received visits from city bylaw who inspected the property and did not find anything wrong. The Landlord stated that she personally attends the building once every couple of weeks to check up on these things.

The Landlord stated that some tenants have different standards which are different from that of the Landlord. The Landlord provided copies of maintenance logs/ reports showing the regular maintenance performed at the residential property.

The Landlord pointed out that the photographs provided from the Tenants will show dirt if they are taken prior to the cleaner arriving to perform cleaning. The Landlord stated that there are 176 occupants living on the property.

Rent Reduction Excessive Noise

The Tenants are seeking compensation of \$250.00 for noise caused by the Landlord that occurred in 2020 -2021.

The Tenant testified that during covid, the only option was to work from home. The tenants stated that they experienced noise from work and construction from the Landlord renovating suites in the building. The tenant stated that his work was impacted so he wants \$250.00.

The Landlord testified that 6-7 suites were vacated, and the Landlord completed some work such as painting and flooring in the units. The Landlord stated that the units that were renovated/ repaired were not even located close to the Tenant's rental unit. The Landlord stated that work was performed between 8:00 am and 5:00 pm each day.

The Tenant replied that the Landlord does not know how the sound travels. The Tenant stated that we are required to work from home due to the pandemic, so their needs are in conflict with the Landlords repairs.

The Tenants were asked by the Landlord to provide specific dates that they experienced disturbances but did not do so.

Kitchen Work

The Tenants testified that on September 10, 2019 they discovered a water leak coming from a drainpipe located in the wall behind their kitchen sink. The Tenant's reported the issue to the Landlord. The Tenant's stated a repair to the kitchen countertop was also needed.

The Tenants testified that the Landlord responded the next day and discovered the source of the leak. On October 17, 2019 the Landlord attended the rental unit and disconnected the kitchen sink plumbing and sink. The Tenant's had a temporary sink set up on and working on October 25, 2019.

The Tenant's stated that they had no use of their kitchen facility and had to order in meals and go out for meals. The Tenants are seeking compensation of \$2,152.64 from the Landlord for loss of use of the sink.

In reply the Landlord provided testimony confirming that they were informed of the leak on September 12, 2019. The Landlord testified that the repair was completed, and the kitchen sink was re-installed and operational around September 16, 2019. The Landlord testified that the Tenants then asked the Landlord to replace the countertop. The Landlord testified that they offered to replace the countertop with the same type, and the Tenants replied that they wanted a more expensive countertop. The Landlord testified that the Tenants agreed to pay \$1,922.00 for a more expensive quartz countertop. The Landlord stated that a contractor came and measured it up and the Landlord ordered the countertop. The countertop was installed in late October / early November. The Landlord stated that because the Tenants agreed to pay for the quartz countertop, the Landlord the sink was removed, and a temporary sink was installed at the Tenants request. The Landlord stated that if the Landlord had replaced the countertop with the same type as the original, it would have taken one day for the replacement.

In reply, the Tenants provided testimony confirming that the quartz countertop was installed in late October / early November.

BC Hydro Bills

The Tenants are seeking compensation for increased hydro electricity costs related to their use of the electric heaters when the main boiler broke down. The Tenants are seeking \$47.66.

In reply, the Landlord agreed to compensate the Tenants for this claim.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 7 of the Act provides,

if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 65 of the Act provides that if the director finds that a Landlord or Tenant has not complied with the Act, the regulations or a tenancy agreement, the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

Section 28 of the Act, states that a Tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

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 substantial interference with the ordinary and lawful enjoyment of the premises.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

On June 24, 2020 the provincial government passed legislation under the Emergency Program Act order # M195 regarding the *Residential Tenancy Act*. Section 6(1) of the Order provides that it is not unreasonable for a landlord to restrict access to common areas of the residential property by a tenant of a rental unit that is part of the residential property if the restriction is necessary to protect the health, safety or welfare of the landlord, the tenant, an occupant, or a guest of the residential property due to the COVID-19 pandemic. The provisions that allowed a landlord to reasonably restrict or schedule the use of common or shared areas to support physical distancing were repealed as of July 10, 2021.

Based on the affirmed testimony of the Landlord and Tenants, the documentary evidence before me, and on a balance of probabilities, I make the following findings:

Rent Increases June 2018 to April 2021

Tenants are seeking compensation for a dispute that could have been dealt with back 2018 or 2019. Rather than applying for dispute resolution back in 2019 the Tenants have waited two years and now seek to recover 24 months of rent increases from the Landlord.

I find that the Tenants' claim amount to recover the full amount of rent increases is not properly connected to the reasons behind their monetary claim. While the Tenants have a right to apply for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; any compensation awarded stems from proof of a breach and proof of a loss, and the value of the loss. The Landlord has a right to issue yearly rent increases. The Tenants' claim to recover amounts of rent increases is not an entitlement set out in the Act connected to whether or not a Landlord has performed cleaning or maintenance on a property. The Tenants are seeking increased rent payments of \$4,440.00; however, any compensation awarded for a breach of the Act needs to be qualified and quantified by the person's actual loss.

The Tenants' claim for compensation is related to what they feel is a reduction of services such as a reduced presence of the Landlord on the property and less maintenance performed on the property. The Tenants' explanation of the claim is that there was a reduction in the Landlord's availability and performance in dealing with tenancy issues and cleaning /maintenance obligations.

While I have reviewed the Tenants' photographic evidence of the residential property and accept that the photographs show some unclean common areas, I also note that the building is 50 years old and contains 92 rental units and 176 occupants. In the Tenants' documentary evidence, they reference a City Standards of Maintenance By-law No. 5462: The By-Law provides that every lodging house owner shall at all times keep or maintain the lodging house:

- (a) in a thoroughly clean and sanitary condition, including windows and lightwells;*
- (b) free of pests, including insects and rodents;*
- (c) fixtures and appliances in good working order and repair;*
- (d) floors, stairs, doors, walls and windows in good working order and repair;*
- (e) heating system in good working order and repair; and*
- (f) sinks, toilets and bathing fixtures in good working order and repair.*

Every lodging house operator shall:

- (d) provide sufficient maintenance staff to perform room cleaning as well as cleaning of all common use areas, as often as required to keep in a clean condition.*

The Tenants did not provide a copy of the entire By-law and there is no evidence before me from the Tenants that a building inspector or bylaw officer attended the residential property for inspection and found the Landlord in breach of the By-law with respect to the cleaning and maintenance of the residential property or common areas.

The Landlord testified that a bylaw officer visited the residential property for inspection and did not find anything wrong.

Section 32 of the Act provides 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.

I find that the Tenants have provided insufficient evidence to prove that the Landlord has breached the Act by failing to provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, making it suitable for occupation by a tenant.

The Tenants claim to be compensated in the amount of \$4,440.00 is dismissed without leave to reapply.

Roof Top Closure

I accept the Landlord's testimony that they closed the rooftop deck due to Covid 19.

The Tenants' claim to be compensated due to the closure of the roof top deck from April 2020 to August 2020 is dismissed without leave to reapply.

I find that Emergency Program Act order # M195 permitted the Landlord to restrict access to the rooftop deck of the residential property by a tenant due to the COVID-19 pandemic.

Smoking Issues

I accept the Landlord's testimony that the residential property is a non-smoking property. I also accept the Tenants' and Landlord's testimony that occupants or guests of occupants on the residential property have been found smoking on the residential property. I accept the Landlord's statement that the Landlord issues breach letters when they identify tenants who are smoking on the property. I find that there is insufficient evidence from the Tenants to prove that the Landlord has a policy permitting smoking on the property.

I find that it is not reasonable to expect that the Landlord can monitor or control the behavior of everyone entering onto the residential property. I have also considered that

the Tenants' monetary claim is more in line with a fine / punishment rather than a loss that they have suffered.

The Tenants' claim for compensation due to observing people smoking on the property is dismissed without leave to reapply.

Rent Reduction Heat

I find that the provision of heat is included in the rent. I accept the evidence before me that the main boiler was broken and was not providing hot water to the radiant heaters in the rental unit. While the Tenants provided information that the Landlord is required by a city bylaw to provide a temperature of 22E Celsius, the Tenants did not provide evidence showing the temperature in the rental unit for the 10-day period that they are claiming for.

I note that the Landlord testified that the two smaller boilers were working and that the Tenants borrowed two space heaters from the Landlord in November and February. I find that the Tenants were being provided with heat, but at a lesser level.

I find that the Tenants suffered a loss of value in the tenancy as they were not provided with heat for 10 days: and intermittently in February and March. I find the value of the Tenants loss is not proven and I find that their monetary claim amount is inflated. I find it is reasonable to award the Tenants nominal damages in the amount of \$150.00 for a loss of value in the tenancy with respect to heat that is included in the rent.

Cleaning and Maintenance

I find that the Tenants' monetary claim is for the same reasons contained in their earlier claim.

I find that the Tenants have provided insufficient evidence to prove that the Landlord has breached the Act by failing to provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, making it suitable for occupation by a tenant.

The Tenants' claim is dismissed without leave to reapply.

Excessive Noise

The issue for me to determine is whether or not the Landlord has failed their obligation to protect the Tenants right to quiet enjoyment. Do the noise disturbances amount to substantial interference with the ordinary and lawful enjoyment of the premises. I have considered whether or not the noise disturbances caused by the Landlord performing repairs or renovations on the property amount to substantial interference with the ordinary and lawful enjoyment of the premises.

A landlord has a duty to maintain a residential property making it suitable for occupation by a tenant. These obligations of the Landlord need to be balanced with the right of Tenant to quiet enjoyment. I find that a tenants entitlement to quiet enjoyment does not mean freedom from all noise or disturbance. I find that noise caused by the Landlord performing repairs or maintenance on the property during business hours is not an unreasonable disturbance.

I also note that there were no amendments to the Act, or regulations due to covid that provided additional rights to tenants working from home.

The Tenants' claim for compensation is dismissed without leave to reapply.

Kitchen Work

I find that the there was a water leak that affected the Tenants' use of the kitchen sink from September 12 to September 16, 2019. I accept the Landlord's testimony that the Tenants agreed to pay for a quartz countertop and the sink was removed at the Tenants request and a temporary sink installed until the countertop and sink was installed in late October 2019. I find that the countertop and sink were removed to accommodate the request of the Tenants and they are not entitled to compensation from the Landlord for the six-week period of time between September 16 and late October 2019.

I note that other than the loss of the kitchen sink for four days, the Tenants had full use of the kitchen and there was another sink in the bathroom that could have been used. The Tenants have failed to prove the value of their loss. I find it is reasonable to award the Tenants nominal damages in the amount of \$10.00 per day, for a total monetary award of \$40.00 for a loss of use of the sink due to the repair of a leak.

BC Hydro Bills

The Landlord agreed to pay the Tenants the amount of their claim for hydro costs. I award the Tenants the amount of \$47.66.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenants had some success with their application. I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I award the Tenants compensation in the amount of \$337.66. I authorize the Tenants to withhold the amount of \$337.66 from one (1) future rent payment.

Conclusion

The Tenants were partially successful with claims regarding a reduction of value in the tenancy related to heat, loss of use of a sink, and recovery of hydro costs.

The Tenants are awarded compensation of \$337.66, and I authorize the Tenants to withhold the amount of \$337.66 from one (1) 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 *Residential Tenancy Act*.

Dated: January 5, 2022

Residential Tenancy Branch