



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Fraser Park Realty Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, RP, OLC, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This reconvened hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- A monetary order for damages or compensation pursuant section 67;
- An order for repairs to be made to the unit, site or property pursuant to section 32;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The original hearing was adjourned and reconvened to today's date at the tenant's request. This decision should be read in conjunction with the interim decision issued on November 22, 2022.

Both tenants and representatives of the landlord attended this hearing and the landlord acknowledge service of the tenant's Notice of Dispute Resolution Proceedings package. The tenants testified they did not receive the landlord's evidence and the landlord could not confirm it was sent to them. Accordingly, the landlord's evidence was excluded from consideration in this decision.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the

offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary order?

Should repairs be made to the unit?

Should the landlord be ordered to comply with the Act or tenancy agreement?

Can the tenants recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenants claim that their main bathroom has been un-useable since December 18, 2021. Due to renovations done to the unit above theirs, every time that occupant above takes a shower, water comes into their unit from the ceiling above. Also, the combination washer/dryer is located in the bathroom and hasn't worked since the end of April 2022. When it started having issues, the landlord sent a technician who confirmed the combo needs to be replaced. The unit was disconnected and now it sits in the middle of the main bathroom and has not been replaced.

In the bathroom, mold has started to grow. The tenants obtained a mold report from an environmental agency in July 2022 and they seek compensation from the landlord for the report. The landlord submits that the environmental report obtained by the tenants

was done at their own expense and impetus. They never sought the landlord's approval before obtaining it and they should be responsible for its cost.

The tenants testified that they have been going to the laundromat or have been relying on the kindness of friends and family to do their laundry since April 2022. At the time of filing, they believed \$100.00 would adequately compensate them, however they now realize it should have been higher. The landlord does not agree they should compensate the tenants with \$100.00 due to the broken dryer. The landlord testified that their relationship is dysfunctional and that the tenant could have assisted in removing the old dryer and made attempts to help.

The tenants seek compensation for the ongoing issue with the un-useable main bathroom. The landlord had cut a hole in the ceiling of their unit to inspect for water leaks and it remains unrepaired with the water continuing to leak. The tenants seek \$150.00 per month for the 8 months, until the original hearing, or \$1,200.00 as compensation. The landlord testified that the leak is coming from the bathtub above theirs. On March 22, 2023, the landlord requested a hearing before strata council and the strata told the landlord to coordinate an independent plumber. The landlord has also filed an application before the Civil Resolutions Tribunal (CRT) to get cooperation from the owner of the unit above. Nothing can be done because the owner of the unit above will not give the landlord access to their unit.

The landlord testified that he was unaware that the new washer/dryer combo purchased by the landlord was not yet installed. He agreed to the following settlement of this portion of the tenant's application:

The parties agree that the landlord will forthwith have their contractor make arrangements with the tenants to have the old washer and dryer combo removed and install a new washer dryer combo unit by April 30, 2023.

During the hearing, both parties testified that they agreed that they understood that this settlement term is legal, final, binding and enforceable.

Analysis

With respect to the ongoing leak issue since December, 2021, I find that the landlord cannot adequately repair the leak originating from the unit above without that owner's consent and cooperation; an order from the Civil Resolutions Tribunal; or a direction from the Strata Council. Put simply, I cannot order that the landlord repair the leak that

originates from the unit above the tenants'. As such, the application seeking repairs is dismissed with leave to reapply.

The tenants' application seeking an order that the landlord comply with the Act was settled by mutual agreement in the following terms:

The parties agree that the landlord will forthwith have their contractor make arrangements with the tenants to have the old washer and dryer combo removed and install a new washer dryer combo unit by April 30, 2023.

I now turn to the application seeking monetary compensation.

Section 7 of the Act states: 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.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

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.

[the 4-point test]

The tenants claim as follow:

1. **\$525** for environmental report
2. **\$100** for laundry expenses due to a broken dryer since April 25th 2022
3. **\$1200** for unusable, leaky, moldy and torn bathroom - \$150 per month for 8 months (ongoing since December 18th 2021)
4. **\$100** dispute filing fee

I find the environmental report was not a necessary expense that should be borne by the landlord. While I recognize that there is mold growing in their bathroom due to the leak caused by the unit above theirs, I have already determined that the landlord is incapable of fixing it without the other unit's cooperation or consent. I accept that the landlord has sought a hearing before strata council and filed an application before the CRT to move this issue forward. Despite this, I do not find the tenant needed to obtain the report to prove the presence of the mold which would be obvious in this case. This portion of the application is dismissed.

Section 27 of the Act states that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement. If the service or facility is restricted, the landlord must reduce the rent in an amount equivalent to the loss in the value of the tenancy resulting from the termination or restriction. I note that a washer and dryer is noted as a service or facility included in the tenancy agreement. As the tenants have been without the laundry facility since April 25, 2022, they are entitled to compensation. I find the amount sought of \$100.00 is nominal, compared to the added burden of having to do laundry outside the home. The tenants are awarded the **\$100.00** for the loss of the service or facility.

The evidence before me clearly shows that the tenants first notified the landlord about the leak from the unit above in late December of 2021. I have read the 23 page email chain supplied as evidence from the tenant,
[Tenant_Letters_to_Strata_&_Landlord_WaterLeak_May_16_2022.pdf]
and I conclude that the landlord has not been proactive in trying to resolve the issue of the leak coming from the unit above. The landlord testified that it wasn't until late September, 2022 that they filed an application before the CRT to seek coordination of repairs after the owners of the unit above were not being cooperative. Further, a hearing before the strata council wasn't sought until March 22, 2023 to coordinate an independent plumber to investigate.

A landlord is required under section 32 of the Act to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location

of the rental unit, makes it suitable for occupation by a tenant. I find that the landlord has fallen short of this requirement by not actively pursuing a remedy to the leak situation coming from the unit above. I find that there was a loss to the value of the tenancy and that the suggested amount of \$150.00 per month is reasonable, based on the essential purpose of the room that is not useable. In reviewing the correspondences between the parties, I find that the tenants continued to advocate for the repairs to be done and tried their best to mitigate the loss. The tenants are awarded the **\$1,200.00** compensation they seek.

The filing fee of **\$100.00** shall be recovered from the landlord as the tenants' application was successful.

Item	amount
Laundry expense	\$100.00
unusable, leaky, moldy and torn bathroom	\$1,200.00
Filing fee	\$100.00
TOTAL	\$1,400.00

In accordance with the offsetting provision of section 72, the tenants may reduce a single payment of rent due to the landlord by \$1,400.00.

Conclusion

The tenants' application seeking repairs to the leak coming from the unit above is dismissed with leave to reapply.

Pursuant to section 63, I recorded the following settlement of the tenants' application seeking an order that the landlord comply with the Act:

The parties agree that the landlord will forthwith have their contractor make arrangements with the tenants to have the old washer and dryer combo removed and install a new washer dryer combo unit by April 30, 2023.

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: April 05, 2023

Residential Tenancy Branch