



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation in the form of a retro-active rent abatement. The tenant's application includes a claim for a rent refund of \$253.00 per month for 12 months, \$4,700.00 reimbursement for lost and damaged property, \$5,000 for harassment and \$5,000 for mental and physical distress caused by the landlord.

Both parties appeared and gave testimony.

Preliminary Matter

Adjournment Request by Applicant to Submit Additional Evidence

Prior to and during the proceedings, the tenant initiated a request for an adjournment. The tenant stated that he required additional time because of his medical condition and so that he could submit additional evidence in support of his claims. The tenant stated that he had verbally requested an adjournment from the respondent landlord and had written numerous letters to Residential Tenancy Branch asking that the hearing be postponed.

The landlord acknowledged that the tenant had approached him regarding the need for an adjournment on the basis that the tenant had allegedly been in an accident and was in recovery. The landlord testified that he requested medical verification that was never supplied by the tenant. The landlord does not agree with any adjournment.

A letter dated November 17, 2011 was on file from the tenant requesting 3 months to complete 300 documents for submission prior to the hearing because the tenant is under a doctor's care for depression, anxiety and a respiratory condition that "*have come about as a direct result of the tenancy*".

Pursuant to the Residential Tenancy Rules of Procedure, Rule 3.1, all evidence must be served on the respondent. Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time

as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding.

I find that this tenant filed for dispute resolution approximately 2 and a half months ago on September 29, 2011 and the hearing was scheduled for December 13. Therefore, all evidence from both parties would need to be served by December 8, 2011 or December 10 at the latest.

The Residential Tenancy Rules of Procedure state that, if copies of the applicant's evidence are not received by the Residential Tenancy Branch or served on the respondent as required, the Dispute Resolution Officer must apply Rule 11.6 which deals with the consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance.

This rule permits the Dispute Resolution Officer to adjourn a dispute resolution proceeding to receive evidence that a party states was submitted to the Residential Tenancy Branch but was not received by the Dispute Resolution Officer before the dispute resolution proceeding.

In this instance there was a claim by the tenant/applicant that some of the tenant's evidence was submitted to the branch but not to the respondent. In addition, according to the tenant, the majority of the tenant's evidence still needed to be prepared for submission and was neither served to the respondent nor the Branch. The tenant was confident that an additional 3 months would suffice to allow this evidence to be submitted and served.

Rule 6.1 of the Rules of Procedure states that the Residential Tenancy Branch will reschedule a dispute resolution proceeding if "*written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the dispute resolution proceeding.*"

In some circumstances proceedings can be adjourned after the hearing has commenced. However, there is mandatory requirement that the Dispute Resolution Officer, (DRO), must look at the oral or written submissions of the parties; and must consider whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose] and whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding. The DRO must also weigh the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and assess the possible prejudice to each party.

In this instance, the hearing was on the tenant's application submitted on September 29, 2011 with the hearing scheduled for December 13, 2011 and I found that the applicant should have submitted any evidence upon which the applicant wished to rely during the two-month period prior to the hearing. I found that there was insufficient support to prove that the applicant was not given a fair opportunity to make his evidentiary submissions. I also noted that the tenant had never made any written submissions to the landlord in regard to the tenant's need for an adjournment and only made a verbal request. I find that, after being asked to supply the landlord with verification of the tenant's medical incapacity that impeded him from proceeding, the tenant failed to supply any verification to support his request to adjourn to the respondent landlord.

I found that delaying this hearing further for the purpose of allowing the applicant a second opportunity to submit evidence that could have been served on the other party and placed into evidence in advance of the hearing, would be prejudicial to the respondent.

Accordingly, I found that there was not adequate justification under the Act and Rules of Procedure to support imposing an adjournment on the other party. Therefore the tenant's request for an adjournment to receive additional supporting evidence was denied.

The tenant/applicant was permitted, however, ample opportunity during the hearing to give verbal testimony with respect to the basis for his monetary claims and this testimony was duly considered.

Background and Evidence

The parties testified that the tenancy began on October 1, 2009 as a fixed term for a 5-month period, after which the landlord and tenant renewed the agreement on a month-to-month basis. The current rent was \$320.00.

The tenant testified that from the start of the tenancy, he was bullied by the landlord and was rushed into signing the agreement without being given the opportunity to read and understand the provisions. Moreover, according to the tenant, the landlord did not properly disclose the fact that the building was undergoing significant renovations in the near future, including a roof replacement and other disruptive construction projects. The tenant testified that he was also subjected to aggressive and demeaning commentary by the manager at the time who made threats that they would be getting rid of certain types of tenants. The tenant stated that this treatment brought on an anxiety attack that required medication and impeded his ability to function for several months.

The landlord stated that, although he was not present, he disputed the allegation that there was rude treatment and threats made, pointing out that the manager in question, had been a long-term employee for over 20 years without incident before leaving last summer and the records that she had kept on file about the tenancies did not contain any derogatory notations about the tenant. The landlord also pointed out that after the five-month fixed term had expired, the tenant then signed a subsequent agreement to continue the tenancy. The landlord testified that the tenant admittedly had anxiety issues prior to his tenancy.

Rent Reduction

With respect to his claim for a rent abatement, the tenant stated that the relentless repairs compromised his right to quiet enjoyment of his suite. The tenant testified that the offensive conduct of the contractor staff also contributed to his stress-level. The tenant stated that the landlord's failure to inform him that there were planned repairs, failure to give adequate notice of the commencement of the work and the fact that they neglected to offer the tenant the option of relocating, were all examples that indicate a blatant disregard for the tenant's rights under the Act and agreement. The tenant testified that one elevator was out of commission and the tenant was plagued with dust, noise and a bed-bug infestation brought on by the workers. The tenant stated that he was forced to endure destroyed walls and ceilings which left his home "open to concrete" for three full months. The tenant testified that the workers employed by the contractor were belligerent, incompetent and dishonest. The tenant stated that he was not able to trust the contractor's staff to do the repeated clean-ups necessary in his unit as he found he was missing items afterwards and their cleaning ability was substandard. The tenant stated that the repeated infusion of drywall dust caused him a serious respiratory problem that changed his voice. The tenant feels that a 100% rent abatement is justified for the twelve-month period or at least for nine months.

The landlord acknowledged that significant ongoing work had been pursued by the landlord for much-needed upgrades to the complex over the past year and a half including a new roof, window replacements and boiler upgrade. The landlord defended the process followed in conducting these repairs and stated that they did everything possible to placate affected tenants with success. The landlord testified that they could have followed the process to vacate affected units by issuing Two Month Notices to End Tenancy for Landlord's Use, but felt it essential not to terminate tenancies, but to maintain them. The landlord testified that a number of initiatives were implemented to facilitate the process, and offset the inconvenience, including holding information sessions for tenants, granting the tenants gift cards to a local restaurant when their unit was being worked on and providing a dedicated contact person to receive and resolve complaints from tenants about the renovation work going on. The landlord testified that

any complaint from a tenant was promptly dealt with and requests for cleaning of affected units were addressed as they arose. The landlord testified that the tenant was offered services including cleaning but declined these offers. The landlord referred to written communications from the tenant that showed he refused the help offered by the landlord. The landlord does not agree that any rent abatement is warranted.

Property Damage

With respect to the tenant's claim for damaged property, the tenant testified that 4 cloth chairs that were approximately 2 years old were ruined by the drywall dust at a loss of \$200.00. The tenant testified that his two-year-old computer system, including the printer and webcams valued at \$500.00 was subjected to 7 bouts of drywall dust, after which he was advised by a professional, that the system was beyond repair. The tenant testified that he had no choice but to discard the computer altogether. The tenant is also claiming the \$275.00 replacement value of a bed that had to be thrown away due to a bed-bug infestation brought into his unit by the construction workers. The tenant also lost the use of two used T.V.s valued at \$100.00. The total claim for items damaged by the renovation work is \$1,075.00. No receipts were submitted.

The remaining claim for damaged property, in the amount of \$3,625.00, related to a vehicle that the tenant is convinced was repeatedly vandalized by an employee of the landlord. No receipt for the claimed expenditure in evidence. The tenant testified that the manager was seen in the vicinity of the vehicle and, given the threats she allegedly made at the start of the tenancy, the tenant believes that this individual was clearly responsible for the damage. The tenant testified that a homeless person was found sleeping in his vehicle and disclosed that someone had permitted him to occupy it in exchange for a payment of \$20.00. The tenant testified that the vehicle damage was reported to the police and they recommended that the landlord permit the tenant to park in the front of the building. However, the landlord refused the tenant's request.

The landlord testified that the tenant did not accept the landlord's efforts to rectify the damage caused to his possessions. The landlord testified that the tenant's chairs could have been cleaned instead of being thrown away. The landlord testified that in regard to the computer issue, the tenant declined any help in having it cleaned. The landlord testified that, had the tenant fully cooperated, it could have been determined whether or not his computer equipment was still usable, and if not then the landlord would have been able to compensate the tenant. However, the landlord feels that the tenant's actions, deprived the landlord of the opportunity to accurately determine the damage and is now unfairly demanding compensation. With respect to the loss of the tenant's bed, the landlord stated that a tenant may be supplied with a bed at the start of the tenancy, but replacing the bed was not approved. The landlord testified that a bed-bug

infestation need not have rendered the mattress useless because it is possible to completely exterminate the vermin. The landlord's position is that no compensation is warranted.

With respect to the allegations that the tenant's car was vandalized by the manager, the landlord testified that the tenant offered no viable proof that this crime was perpetrated by the manager. The landlord stated that, contrary to the testimony of the tenant, there are no reports on file with detrimental information or negative commentary regarding this tenant and nothing to indicate that the manager had been persecuting this tenant. The landlord testified that the only report placed on file by the manager, related to the tenant's complaint about damage to his car. The landlord pointed out that vandalism to vehicles is a police matter and compensation can be claimed from ICBC. The landlord testified that, moreover, the tenancy agreement does not entitle the tenant to have a parking spot as part of the tenancy and spaces are strictly "first-come-first-served". The landlord testified that there is a waiting list for the parking spaces in front of the building. The landlord's position with respect to the car damage is that the tenant has not sufficiently proven that the damage was the landlord's fault and no compensation is warranted for this loss.

Claim for Harassment and Physical and Mental Distress

With respect to the tenant's claim for \$5,000.00 in damages for harassment and a further \$5,000.00 in damages for mental and physical distress, the tenant testified that the landlord's conduct throughout the tenancy and the problems he has had to tolerate for the past two years have taken a serious toll on his health and have caused him to suffer chronic anxiety and depression that incapacitates the tenant to this day. The tenant stated that the actions of the landlord included threats and ill-treatment at the start of the tenancy that caused a 5-month panic attack, ongoing intrusions as part of the building renovation, contaminated air from the construction dust, indifference to the tenant's complaints, persecution by the former manager whose motive was to drive the tenant out and negligence that resulted in a sub-standard living environment and lost or damaged property for the tenant.

The landlord disputed the tenant's allegations of harassment and pointed out that any time the tenant disagreed with the landlord's position, the tenant categorized it as "harassment". The landlord testified that there was no evidence of any conspiracy to drive the tenant out or to badger the tenant. The landlord testified that the tenant flatly refused deal with him in particular, making it more difficult to resolve the tenant's concerns to his satisfaction. The landlord testified that the tenant's mental and physical problems clearly pre-dated the tenancy and were not caused by any actions of the landlord and there is no basis for compensation whatsoever.

Analysis

Analysis of Monetary Claims

In regard to an Applicant's right to claim damages from the other party, Section 7 of the Act states that, if a landlord or tenant does not comply with the 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 grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

The tenant is alleging that the landlord did not comply with Act by ensuring that the tenant's right to quiet enjoyment was protected.

Section 28 of the Act protects a tenant's right to quiet enjoyment and 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 [*landlord's right to enter rental unit restricted*];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Rent Abatement for Loss of Quiet enjoyment

I find that, over a period of approximately 9 months, this tenancy had been significantly disrupted by ongoing repairs of a fairly extensive nature. I accept the tenant's testimony that his life was impacted in a negative way by the construction projects and I find that, on a balance of probabilities his tenancy was devalued as a result.

I find it evident that the tenant's claim for loss of quiet enjoyment has successfully met elements 1, 2 and 3 of the test for damages.

However, I also accept the landlord's testimony that numerous measures were implemented to reduce the impact of the work on the residents, including the effects on this tenant and I find that the tenant refused to accept some of the help that was offered by the landlord. While the tenant gave some explanation to justify his refusal of the landlord's offers, there is no way to know, after-the-fact, whether any intervention by the landlord would have helped off-set or resolve some of the tenant's issues.

Given the above, I find that the tenant's claim for loss of quiet enjoyment has not completely met element 4 of the test for damages. I find that, had the tenant availed himself of the help offered, notwithstanding his doubts and reservations, the tenant would have been able to justify a rent abatement of 30% for a 9-month period. Due to the tenant's failure to satisfy element 4 of the test for damages by making a reasonable attempt to minimize his loss, I grant the tenant a lesser rent abatement of 20% of the \$320.00 rent this for 9-month period totalling \$576.00.

With respect to the tenant's claim for the loss of personal possessions in the unit, I find elements 2, 3 and 4 of the test for damages were not satisfied. I find that the tenant failed to prove that the items were completely destroyed solely through a violation of the Act by the landlord. I also find that the tenant did not prove the value of the items in question and did not establish that the tenant took reasonable measures to minimize the loss. With respect to the claim for damage to the automobile parked in the parking lot, I find that the claim for compensation relating to damage to the tenant's vehicle did not sufficiently meet elements 2 and 3 of the test for damages. There was not sufficient proof shown that the vandalism was perpetrated by the landlord and the monetary

value of the damage was not verified. Accordingly, I hereby dismiss the tenant's claim for \$4,700.00 compensation for property loss.

Compensation for Harassment and Health Issues (Aggravated Damages)

The tenant has claimed \$5,000.00 for harassment and an additional \$5,000.00 for mental and Physical Distress. I find that this claim must be categorized as aggravated damages.

If requested, a Dispute Resolution Officer may grant aggravated damages as an award, or an augmentation of an award, of damages in compensation for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress and other intangible losses, which are considered to be "non-pecuniary" in nature and are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's wilful or reckless indifferent behaviour. The damage must be found to be caused by the deliberate or negligent act or omission of the wrongdoer and must be of the type that the wrongdoer should reasonably have foreseen at the time they entered into the rental contract, that such a breach would cause the distress claimed.

The offending conduct must be sufficiently significant in depth, or duration, or both, that they represent a profound influence on the wronged person's life. Aggravated damages are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses and they must specifically be sought. (my emphasis)

I find that the tenant's application did not contain a specific request for "aggravated damages" by name. However, I find it clear that the tenant was seeking such damages.

Notwithstanding the fact that the tenant did not provide specific medical documentation, I am prepared to accept the tenant's testimony that he genuinely suffered and is still being plagued with anxiety and depression.

However, although the tenant is of the opinion that these symptoms were caused solely by harassment from the landlord, I find insufficient proof was presented to verify that the tenant's suffering was caused by the willful or recklessly indifferent behavior by this landlord. In regard the ongoing repairs, I find that the landlord 'did make reasonable and fairly successful attempts to attempt to lessen the impact of the construction project. I find that any resulting mental, physical or emotional harm suffered by the tenant was not proven to have been caused by deliberate or negligent acts or omissions on the part of the landlord.

I also find that the inevitable discomfort caused by construction work taking place in a complex, can normally be fully compensated through a monetary award for devalued tenancy, as has been granted above, earlier in this decision.

Given the above, I find that the tenant's claim for aggravated or non-pecuniary damages does not meet the threshold under the Act and must therefore be dismissed.

Conclusion

Based on the testimony and evidence discussed above, I find that the tenant is entitled compensation in the amount of \$560.00 representing a 20% rent abatement in full compensation for the last 9 months, during which construction had been going on. The tenant is entitled to deduct this specific amount from rent now owed or payable to the landlord.

The remainder of the tenant's application is dismissed without leave

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: December 13, 2011.

Residential Tenancy Branch