



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, ERP, RP, PSF, RR, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; his witness; the landlord; and his witness.

The landlord testified that he did not receive the tenant's evidence until July 15, 2012 and that he had not had sufficient time to prepare for the hearing. The tenant testified he served the landlord with his evidence twice, on the advice of the Residential Tenancy Branch (RTB); once on July 9, 2012 by placing it in the landlord's mail slot and in person on July 15, 2012 when he handed it to the landlord.

While Section 89 of the *Residential Tenancy Act* (*Act*) does not allow a tenant making a financial claim against the landlord to serve a copy of his Application by leaving it in a conspicuous place such as a mail slot or box the *Act* does not apply the same restriction to the service of evidence related to that claim. As such, I accept the landlord was served with the tenant's evidence on July 9, 2012 in accordance with the provisions of Section 88 of the *Act*.

The landlord also testified that he did not have all of the evidence the tenant submitted to the RTB. As the tenant served the landlord twice I find, based on the balance of probabilities the landlord has received all of the evidence relied upon by the tenant for this hearing.

The landlord testified that he was not able to serve the tenant with his evidence because the tenant has moved out of the rental unit and has not provided the landlord with an address to be used for service. As a result, I find that I cannot consider the landlord's evidence as the tenant has not received it from the landlord.

In addition, the tenant confirmed that he has vacated the rental unit and as such there is no longer a need to dispute the notice to end tenancy nor is there a need to adjudicate the other matters in his Application that deal with an ongoing tenancy. Therefore, I amend the tenant's Application to exclude the notice to end tenancy; to have the landlord comply with the Act, regulation or tenancy agreement; make repairs and emergency repairs; provide services or facilities required by law; and allow the tenant to reduce rent for repairs; services or facilities not provided..

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for damage or loss and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Act*.

Background and Evidence

The tenancy began in August 2011 for a monthly rent of \$550.00 due on the 1st of each month with a security deposit of \$275.00 paid. The tenant submits that laundry and internet access were included the rent. The landlord testified that internet access was not a service provided under the tenancy agreement and that laundry had been provided as favour to the tenant.

The tenant testified that the landlord has, over the course of the tenancy restricted his access to laundry by having the laundry room locked all the time and only allowing access if the tenant contacted him and then by specifying a day each week that the tenant could do laundry and ultimately to not allowing access at all.

The tenant testified that landlord has not had head on in the rental unit all winter and that on several occasions when the landlord is mad at the tenant he will cut off all power to the rental unit. The tenant submits that as a result he has been sick and has missed 9 days of work resulting directly from the landlord's actions and has had to have sleeping pills prescribed so that he can sleep in the cold rental unit.

The landlord disputes ever turning off power or heat to the rental unit and states that laundry and internet were not included as a service under the tenancy agreement. Neither party provided a copy of a written tenancy agreement that I could consider subject to my findings above on service of evidence.

The tenant's witness testified that she had similar problems with the landlord whenever he was upset with tenants he would retaliate by restricting a service or facility. The witness testified that she had no firsthand knowledge of any specifics related to the tenant's application but had talked with the tenant about some of the events.

The landlord's witness confirmed she has restricted access to the laundry but that she just asks the landlord and it is always left open for her. She also confirmed that access to the laundry for her was directly through the landlord's own home but that for this tenant he did not have to go through the landlord's home.

The landlord's witness also confirmed the tenant had approached her or her husband on a couple of occasions when his power was out and that on those occasions when the landlord had left the laundry room open for her she or her husband were able to turn the power back on for the tenant.

The tenant also testified that on one occasion he was sleeping and he awoke to a bright red light shining in his face. When he woke further he determined that the landlord was videotaping him sleeping. He went on to state he chased the landlord back into the landlord's part of the property and called the police. He stated the police attended and the landlord did not open his door.

The tenant seeks the following compensation:

Description	Amount
Sleeping Pills	\$15.71
Lack of Heat – 3 months	\$150.00
Loss of Internet	\$150.00
Loss of Laundry	\$300.00
No power	\$150.00
Mental Anguish	\$3,000.00
Water – turned off 1 day	\$50.00
Total	\$5,015.71

Analysis

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.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

In relation to the tenant's claim for compensation for internet service, as the parties dispute whether this was included in the tenancy and there is no written tenancy agreement that I can consider I find the tenant has failed to establish there was a loss of a service for internet service.

Despite the landlord's testimony that laundry had been provided as a favour as both of the witnesses confirmed they had laundry as part of their tenancies, I find based on the balance of probabilities that this tenancy also included laundry as a service. However, again in the absence of a written tenancy agreement, I find the tenant has failed to establish that access to laundry services was different in practice than what was agreed

upon. As such, I find the tenant has failed to establish a loss or restriction of this service.

In regard to the tenant's claims regarding heat; power; and water I find the tenant has failed to provide sufficient evidence to support his claim that the landlord deliberately turned off heat; power; or water. However, I do accept that the tenant did experience periods of time without power, as confirmed by the landlord's witness and as a result of the electrical breaker box being in a locked area that these periods were only rectified at the convenience of the landlord or by relying on the witness to gain access to the laundry room where the breaker box was located.

As such, I accept the tenant suffered a loss of quiet enjoyment of the rental unit for loss of power. As to the value of the loss of power, in the absence of any evidence to establish duration of interrupted power service or the number of occasions I find the tenant has failed to establish a value for this loss.

As to the tenant's claim for compensation for lost employment income and medications, I find the tenant has provided no evidence that he missed work or that the reasons for missing work were medical in nature that are attributable to any actions by the landlord. While the tenant has provided a copy of a receipt for some medication, he does not provide any documentation as to what the medication is for or even what it does.

Finally, in regard to the tenant's claim for compensation for mental anguish I find that as the tenant has failed to provide sufficient evidence to establish any deliberate actions on the part of landlord; any medical evidence of mental anguish or how he established the value of this loss or damage.

Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety.

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: July 18, 2012.

Residential Tenancy Branch