



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

*OPR, MNR, MND, MNSD, MNDC, OLC, LRE, LAT, CNR, FF.*

## Introduction

This hearing dealt with applications by both the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord had applied for:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed and damages, pursuant to Section 67;
- An order to retain all or part of the security deposit pursuant to Section 38;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant had applied for the following:

- An order to cancel the notice to end tenancy for rent, pursuant to Section 46;
- An order for monetary compensation or rent abatement;
- An order to force the landlord to comply with the Act or agreement;
- An order to suspend or set conditions on the landlord's right to enter the suite;
- An order authorizing the tenant to change the locks;
- Reimbursement for the \$100.00 filing fee pursuant to Section 72.

Both parties appeared and gave testimony during the conference call.

The tenant stated that he is willing to vacate the unit and consented to the landlord being granted an Order of Possession. Therefore the portions of the dispute relating to terminating the tenancy, restricting the landlord's access and changing the locks are now moot. However, the tenant still seeks monetary compensation and is still requesting an order to force the landlord to comply with the Act. The landlord still seeks a monetary order for rent owed and damages for repairs.

## **Remaining Issues to be Decided:**

- Is the landlord entitled to monetary compensation for unpaid rent and damages?

- Is the tenant entitled to a rent abatement and damages?
- Should the landlord be ordered to comply with the Act?

### **Background and Evidence**

The tenancy originally started on September 16, 2012 and the tenant paid a security deposit of \$440.00. According to the landlord rent was \$880.00 with an additional \$20.00 per month for a parking stall, which was assigned to the tenant.

The landlord testified that this tenant did not pay any rent for the month of December 2012 and a Ten Day Notice to End Tenancy for Unpaid Rent was issued showing arrears of \$880.00 plus \$20.00 parking and a late fee. Two copies of the Ten Day Notice to End Tenancy for Unpaid Rent were in evidence. The copy of the Notice submitted by the tenant showed no date of issue was written under the landlord's signature. However, the copy of the Notice submitted by the landlord showed that it was apparently signed on December 2, 2012, but this date was crossed out and "Nov" was written in.

The landlord testified that the tenant also failed to pay \$880.00 rent due for January 2013. The landlord is seeking compensation for rent owed for both December and January.

The tenant stated that he had never arranged for parking and never used the parking lot, nor did he have any idea that a stall number had been assigned. The tenant testified that he has been paying \$920.00 per month for rent since he moved in, even though the tenancy agreement he signed showed the rent to be \$880.00. A copy of the agreement was in evidence. Parking was shown on the agreement as available for a fee of \$20.00, but there is no indication of whether or not the use of this facility is an optional choice, or applied automatically to this tenancy. The tenant is claiming reimbursement for the parking charges he paid of \$20.00 per month for September, October and November 2012, for a total of \$60.00.

The landlord testified that the tenant had also verbally agreed to pay an extra \$20.00 charge each month for suite improvements. The tenant stated that this charge is not fair and is seeking a refund of \$60.00 for the extra charges paid for September, October and November 2012.

With respect to the tenant's other monetary claims, the tenant was claiming the cost of a lock he replaced after an incident on December 2, 2012. The tenant testified that this involved the landlord attempting to enter the rental unit without permission or proper notice. According to the tenant, the landlord was in the process of entering the suite using a key, when the tenant tried to shut the door. The tenant stated that,

unbeknownst to him at the time, the deadbolt was extended as the landlord had tried to re-lock the door and this stopped the door from closing shut. The tenant stated that, in an anxious state, he tried to forcibly slam the door closed and that resulted in it bouncing back to hit him causing an injury. The tenant testified that he called police and was advised to avoid the landlord. The tenant testified that he immediately went to buy a lock. The tenant is claiming \$30.28 for the lock.

The landlord acknowledged that he did attempt to enter the tenant's rental unit on December 2, 2012 using a key he found in the rent-payment box. According to the landlord, he presumed that the tenant may have abandoned the unit leaving the key and he went to investigate. The landlord testified that, after knocking several times, he started to unlock the door, whereupon the tenant tried to slam it shut in a fury. The landlord testified that he was trying to re-lock the door, but something or someone prevented the door from closing. The landlord testified that the tenant verbally attacked him, unlatched the security chain and then proceeded to repeatedly slam the door. The landlord testified that, the tenant also left the suite and rampaged down the hallway. According to the landlord, when the police attended, the matter was defused. The landlord testified that he offered to replace the lock, but the tenant was not cooperative and insisted on changing the lock himself.

The landlord testified that the tenant's actions caused damage to the door and the landlord is seeking compensation.

The tenant testified that, in addition to his claim for reimbursement for purchase of a lock, he was also seeking compensation for the loss of two days work valued at \$165.00 per day, due to injuries he felt were the landlord's fault stemming from the landlord's attempt to illegally enter the suite. The tenant submitted a copy of a medical report verifying that he was unable to work because of a hand injury. The tenant did not submit proof of his loss of pay, but stated that he had used up all of his sickness benefits and genuinely suffered a loss of income.

The landlord disputed both the tenant's position on the cause of the injury, for which he felt the tenant was responsible, and the alleged loss of income being claimed by the tenant.

The tenant is seeking a rent abatement and had calculated his costs for the duration of the fixed term tenancy basing a portion of the monetary claim on anticipated future rent costs. In discussion, it became clear that the tenant was seeking a retroactive rent abatement for loss of quiet enjoyment due to the problems he had with the suite and his landlord. The tenant feels that he should not have to pay any rent for December 2012. The tenant testified that, given the upsetting incident and the fact that he was not in the suite for most of the month due to the landlord's interference, he feels entitled to a

100% abatement. The tenant has also taken the position that, because he has not been staying in the suite in January 2013 and has agreed to vacate the suite immediately, he should not be held responsible for rent for the month of January 2013 either.

The tenant had applied for aggravated damages based on the suffering, stress and physical harm he endured.

### **Analysis – Landlord's Claims:**

#### **Rental Arrears**

I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. A landlord can issue a Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the Act when rent is in arrears.

I find that the evidence confirmed that the tenant did not pay the rent when it was due and that under the Act the landlord is entitled to rent on the first day of the month.

With respect to services and facilities included as part of the tenancy, I find that, although the agreement shows that parking at \$20.00 per month is available, no separate parking agreement or any other clarification was in evidence to verify that the parking space and fee would apply to this tenant if he did not park on site. I accept the tenant's testimony that he was not officially assigned a stall and that he has always parked off site. For this reason, I find that the applicable rent for the unit is set at \$880.00 without the right to use the parking lot. I find that the tenant is in default for 2 months of rent valued at \$1,760.00.

#### **Damages**

The landlord is claiming \$1,600.00 for costs of repairs for damage caused by the tenant.

An Applicant's right to claim damages from another party is dealt with under section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party 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.

I find it important to note that in a claim for damage or loss under the Act, the party making the claim 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 reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

I find insufficient evidence was presented to prove that the tenant was responsible for the damage and I also find inadequate evidence to prove the landlord's claimed expenditures. Accordingly, I find that elements 2 and 3 of the test for damages have not been met and the landlord's monetary claim for damages must be dismissed.

### Order of Possession

Although the Ten Day Notice to End Tenancy for Unpaid Rent issued by the landlord is deficient and unenforceable due to the inconsistency with the dates shown on the landlord's and tenant's copies of the document, an Order of Possession will still be issued to the landlord on the basis that the parties have agreed to end this tenancy immediately.

### **Analysis – Tenant's Claims:**

#### Overpayment and Charges

With respect to the amount of rent being claimed by the landlord, I find that the Act governs when, how and how much a Landlord may increase the rent. In regards to rent increases, section 41 states that a landlord must not increase rent *except in accordance with Part 3 of the Act* which includes sections 40, 41, 42, and 43. I must point out that the Act does not contemplate that a tenant would ever be required to pay an increase of rent that has not been legally implemented by the landlord via a fully compliant notice pursuant to the Act. I find that a landlord is also not permitted to add any additional fees and charges beyond the rent specified in the original tenancy agreement.

Given the above, I find that the tenant is entitled to be reimbursed \$60.00 for the three months of extra charges for improvements. I also find that the tenant was wrongly

charged \$60.00 for the parking fees collected for September, October and November 2012 and the tenant is entitled to be compensated.

#### Lock Purchase

With respect to the tenant's claim of \$30.28 for the purchase of the lock, I find that the test for damages is satisfied and the tenant is entitled to be compensated.

#### Loss of Wages

In regard to the tenant's claim for loss of wages for two days, I find insufficient evidence to satisfy element 3 of the test for damages and the claim for \$330.00 must be dismissed.

#### Rent Reduction

In regard to the tenant's claim for a rent abatement for the month of December, I find that 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.

I find that Section 29 (1) of the Act states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission at the time of the entry or not more than 30 days before the entry or unless the landlord gives the tenant written notice at least 24 hours and not more than 30 days before the entry.

According to the Act, the written Notice informing a tenant that the landlord will be accessing the unit must include the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

A landlord may gain entrance if an emergency exists and the entry is necessary to protect life or property and the Act permits a landlord to inspect a rental unit monthly in accordance with subsection (1) (b).

I find that, there was no emergency on December 3, 2012 that would justify the landlord's entry into the suite. I find that, while the landlord may not have intended to interfere with the tenant to the degree that later became evident, the landlord did violate sections 28 and 29 of the Act and this had a detrimental impact on the tenant's comfort to the extent that the tenant felt it necessary to stay elsewhere.

I find that the tenant is entitled to a total rent abatement for 29 days in December from December 3 to the end of the month. I find that the pro-rated amount for the abatement is \$822.14. I find that rent is still owed for the first 2 days of December in the amount of \$57.86 and the landlord is entitled to this amount.

In regard to the rent abatement being sought for the month of January, 2013, I accept the tenant's testimony that he has not been actually living on site during January and that he will vacate immediately. For this reason, I find that a rent abatement of \$880.00 is justified for the month of January 2013.

With respect to the tenant's claim for a future rent abatement, I find that section 67 of the Act does not anticipate potential losses for the future and this portion of the tenant's claim is dismissed on that basis. In any case, the tenancy is ending so no rent would be applicable beyond January 2013.

#### Aggravated Damages

In regard to the tenant's claim for aggravated damages, the tenant indicated in the application that "*aggravated damages*" are being sought.

In addition to other pecuniary damages an arbitrator may award aggravated damages. However, these damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses such as extreme 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.

I find that the non-pecuniary or aggravated damages are measured by the wronged person's suffering and the following factors are considered:

- The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.

- The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.
- They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

In this instance, although the tenancy had problems and some upsetting incidents, I find that the transgressions were not sufficiently significant in depth, nor duration to warrant aggravated damages. Accordingly I find that the tenant's claim for aggravated damages must be dismissed.

I find that the total monetary amount to which the landlord is entitled is \$1,760.00, comprised of \$880.00 for rent for December 2012 and \$880.00 rent owed for January 2013.

I find that the total monetary compensation to which the tenant is entitled is \$1,902.42 comprised of \$60.00 for prohibited charges for improvements, \$60.00 charges for parking, \$30.28 for the lock replacement, \$822.14 rent abatement for December 2012, \$880.00 rent abatement for January 2012 and the \$50.00 cost of the application.

In setting off the tenant's monetary compensation from the landlord's monetary compensation, I find that the tenant is entitled to the difference of \$142.42 and I hereby grant the tenant a monetary order for this amount. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I hereby issue, on consent of both parties, an Order of Possession in favour of the landlord, effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The tenant's \$440.00 security deposit must be administered in accordance with section 38 of the Act.

### **Conclusion**

Each party is partially successful in their applications. The tenant is granted a monetary order and the landlord is granted an order of possession as agreed-upon by the parties.



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 09, 2013.

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Residential Tenancy Branch

