



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The male landlord (the landlord) confirmed that on February 12, 2013, he received the tenant's written notice to end this tenancy by March 15, 2013. The landlord also confirmed that he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on April 5, 2013. I am satisfied that the tenant served the above documents to the landlord in accordance with the *Act*.

The parties also served one another with copies of their respective evidence packages, which they also sent to the Residential Tenancy Branch (the RTB). The landlord said that he had not viewed a flash drive containing digital evidence, including photographs. The landlord is 78 years old and in deteriorating health. He said that he did not know what this flash drive was and has not attempted to retrieve information that may be contained in the tenant's flash drive. In accordance with the RTB's Rules of Procedure regarding digital evidence, I find that the tenant has not taken measures to ensure that her digital evidence could be accessed by the respondents/landlords. As such and as mentioned at the hearing, I have not considered any of the tenant's digital evidence.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for damages or losses arising out of this tenancy?

Background and Evidence

While I have turned my mind to all the documentary evidence, miscellaneous letters, bills and receipts, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The parties entered into an oral agreement regarding this periodic tenancy in early August 2012, likely on August 5, 2012. The tenant was given early occupancy of the rental unit on August 29, 2012, a few days before the scheduled September 1, 2012 commencement date of her tenancy. Monthly rent was set at \$750.00, payable in advance on the first of each month. The landlords have returned the tenant's \$375.00 security deposit paid on August 5, 2012.

Both parties agreed that on February 6, 2013, the landlord gave the tenant a written 1 month notice to end this tenancy. The landlord did not identify an end date to this tenancy and did not use the required RTB form for ending this tenancy. The tenant immediately and correctly advised the landlord that his February 6, 2013 notice was of no legal effect because he had not used the required RTB form for ending a tenancy. The tenant entered into written evidence copies of the correspondence and documents exchanged with the landlord(s) over the final months of this tenancy.

In a February 15, 2013 letter, the landlord noted that he had been released from the hospital the previous day and provided requested receipts for the tenant's rental payments for this entire tenancy. The landlord noted that he was agreeable to the tenant's proposed ending of this tenancy by March 15, 2013. In his letter, the landlord also indicated that he was willing to let the tenant move out by March 6, 2013, if that proved feasible for her. He also stated that if she moved by the end of February 2013, he would refund her security deposit in full. The tenant was unable to vacate the rental unit until March 14, 2013, and has received a full return of her security deposit.

The tenant's application for a monetary award of \$6,850.00 included the following items as set out in page 11 of her written evidence package:

Item	Amount
Rebate of all Rent Paid by Tenant from September 1, 2012 until March 15, 2013	\$4,500.00
Stress from Harassment and Landlords' Unauthorized Entry into her Residence without Consent	1,000.00
Landlords' Failure to Provide Receipts for 6 Months Causing Stress	500.00
Moving Stress (Childcare, Packing , Cleaning, Moving, Administrative Changes, etc.)	500.00
Moving Costs (Moving Truck - \$120.00; Gas for Trips to and From new Property -	320.00

\$100.00; + Cleaning of Old Property \$100.00 = \$320.00)	
Claim Preparation Cost (Administrative and Travel)	30.00
Total Monetary Order Requested	\$6,850.00

The tenant also maintained that the rental unit was not ready for her occupancy by the scheduled September 1, 2012 commencement of her tenancy. The parties agreed that moisture problems caused during the previous tenancy led to restoration work, including the removal of asbestos, that had to be undertaken with the assistance of the landlord's insurance company and a series of sub-contractors. This work eventually led to the tenant having to stay at a hotel from September 17 until September 26, 2012, while major restoration work occurred. The parties agreed that between the landlord's insurer and the landlord the tenant was reimbursed for all of her \$945.90 in hotel costs from September 17 until September 26, 2012. The tenant confirmed that the work was satisfactorily completed by evening of September 26, 2012. The tenant asked for compensation for the landlords' failure to ensure that she had a rental unit suitable for accommodation from the beginning of this tenancy until September 26, 2012.

Analysis

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 65(f) of the *Act* allows me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

Section 32(1) of the *Act* establishes that a landlord must 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 "makes it suitable for occupation by a tenant." Section 28 of the *Act* also establishes a tenant's right to quiet enjoyment of the rental premises including "reasonable privacy" and "exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29."

I have carefully considered the tenant's requested monetary award of \$6,650.00 for the losses she claimed for this tenancy. Both parties confirmed at the hearing that during the course of this tenancy ending on March 14, 2013, the tenant paid a total of \$4,500.00 in rent to the landlords. In addition, both parties agreed that the landlords paid an additional \$945.90 to cover the tenant's hotel bill during the 9 nights in September 2012 (September 17 until the morning of September 26).

I do not accept the tenant's assertion that the circumstances of her tenancy were so poor that she is entitled to a monetary award far in excess of what she actually paid in rent for the period of her tenancy. As of the night of September 26, 2012, the tenant agreed that the rental premises were suitable for her purposes and those of her then 12-month old son. I find that the tenant's overall concerns about her tenancy including her claim that she lived in fear of being evicted for advising the landlords about their failure to comply with various sections of the *Act* are not sufficient grounds to issue a monetary award in her favour.

While I dismiss the tenant's general request for a rebate of all of the monthly rent she paid during this tenancy, I consider the circumstances of the initial month of her tenancy so unusual that I am allowing a partial reduction in her rent for the month of September 2012. The landlord described the circumstances he faced when the previous tenant vacated the rental unit in the following terms.

...Because of slow seepage of water, restricted to the kitchen, this was due to some renovations done upstairs when we renovated the kitchen sink, faucet and also replaced the dishwasher. At that time, it was not visible. Later on, the faucet upstairs was found to be faulty and more water spilled over but not noticeable damage downstairs. As it was a slow leak, and the previous tenant had an area rug, no one noticed. When she moved out, she left the rug there and when we checked everything was fine. However, when the applicant moved it and removed the area rug, she advised me about the moisture...

The landlord provided undisputed written evidence that he gave the tenant the option of returning her security deposit and cancelling their tenancy agreement or delaying moving into the premises until September 15, 2012, when he expected the premises to be repaired and ready for occupancy. The tenant apparently had an arrangement with her previous landlord whereby she and her young son could remain in their previous accommodations. When asbestos was identified in the rental premises, the repair and restoration work became more complex and the tenant did not stay in the rental premises.

This tenancy agreement was scheduled to begin on September 1, 2012 and the tenant moved in with the landlord's permission on August 29, 2012. However, I find that the delays caused by the extensive restoration work, made the effective commencement date of this tenancy September 15, 2012, the date by which the tenant expected to be able to occupy a properly repaired rental unit. Both parties agreed that the tenant paid six months of rent for this tenancy, and did not pay anything for March 2013, although she remained in the rental unit until March 14, 2013.

As outlined earlier, the tenant was not able to move into the rental unit by September 15, 2012. By then, her only alternative was to stay in a hotel until September 26, 2012. Initially, she was told that the repairs would be completed by September 21, 2012. However, after checking out of the hotel, she discovered that the repairs had not been completed, requiring her and her son to return to the hotel for another five nights.

The landlord provided written evidence that his insurance company paid \$750.00 of the tenant's hotel bill for the nights in September 2012 when she had to stay in a hotel. The landlord paid the remaining \$195.90, amounting to a total hotel bill payment to the tenant of \$945.90. While the tenant received reimbursement for her nine nights of hotel costs, living in a hotel under these circumstances does not equate to her expectation that she would be living in her own rental premises by September 1, 2012 and at least by September 15, 2012. Under these circumstances, I find that the tenant did experience a reduction in the value of her tenancy during the first month of her tenancy, even though she received full compensation for all of her direct hotel bill costs.

Based on my finding that the tenancy did not actually begin until September 15, 2012, I find that the tenant was deprived of full value of her tenancy for the first 12 days of her tenancy, which eventually ended on March 14, 2013. Based on this determination, I find that the tenant is entitled to a reduction in monthly rent for 12/30 of the first month of her tenancy, a total of 40%. However, during 40% of the first month of her tenancy, I find that she did receive some value from the landlord for the period when he paid for her hotel bill. Under these circumstances and given the frequent delays encountered by the tenant, I find that the tenant received significantly less value in temporarily living in a hotel room as opposed to the rental unit she had expected to receive when the parties entered into their tenancy agreement. Consequently, I find that the tenant is entitled to a 75% reduction in rent during that 12-day portion of the first month of her tenancy (i.e., September 15-26, 2012) when she was unable to have full occupancy of her rental unit. This results in my finding that the tenant is entitled to a monetary award of \$225.00 representing a 75% reduction for 12 days near the beginning of her tenancy (i.e., $\$225.00 = \$750.00 \times 75\% \times 40\%$).

While a landlord is supposed to issue receipts to a tenant, the landlord did issue receipts when the tenant formally requested such receipts. I find no basis for the issuance of a monetary award in the tenant's favour for the delay in the landlord's issuance of rent receipts.

I have also carefully considered each of the landlords' alleged contraventions of the tenant's right to privacy and quiet enjoyment of her rental unit. For some of the alleged contraventions, such as those where the female landlord asked for access to replace furnace filters, the nature of the requested access and the tenant's reaction to such requests does not lead me to believe that the landlords' failure to provide proper 24 hour notices in accordance with the *Act* should lead to a monetary award for damages in the tenant's favour. For other occasions, the landlord claimed that access was necessary to cope with an emergency situation that had been raised by the tenant. In one incident, the tenant gave the landlords written notice that one of her faucets was leaking and needed repair. Given that the tenant gave undisputed written and sworn testimony that the landlords took almost a month to look into what was clearly not an emergency situation, I am very reluctant to accept the landlords' assertion that immediate access to the tenant's rental premises was necessary without providing the required 24-hours written notice set out in the *Act*. On that occasion, the tenant received a call from the landlord(s), told the landlord(s) that she was on her way back from an appointment and would be able to let them in upon her return. However, one of the landlords and a family member chose to access the rental premises anyway without waiting for the tenant to return to grant them access. Such examples lend support to the tenant's claim that the landlords had little regard to the requirements of the *Act* established to protect tenant's rights to quiet enjoyment of the rental premises.

At the hearing and in his written evidence, the landlord displayed little real appreciation for the importance attached to ensuring that the safeguards in the *Act* are followed. In this case, I find that the tenant has provided sufficient evidence to demonstrate that on at least one occasion and perhaps others, the landlords treated her rental premises as if it remained an area of the landlords' property that they could access without giving regard to the protections afforded to tenants under the *Act*. I find that the landlords demonstrated a practice of disregarding the requirement to provide written notice of any need to access the tenant's rental unit during this tenancy, despite the tenant's protests.

Without some form of monetary award for damages and loss in value of this tenancy agreement, I am concerned that the landlords will continue under the mistaken impression that they can disregard their responsibilities as landlords as set out in the *Act*. Under these circumstances, I award the tenant a monetary award of \$200.00 in damages resulting from the tenant's loss of quiet enjoyment and privacy during this

tenancy as a result of the landlords' failure to adhere to the requirements established by section 28 of the *Act*.

The tenant provided undisputed evidence that the landlord frequently stated that if the tenant persisted in her requests and reminders regarding the requirements of the *Act* he would end her tenancy and use the rental unit himself or for a family member.

However, the tenant was familiar with the *Act* and very quickly advised the landlord of his obligations under the *Act* on the one occasion when the landlord actually tried to issue an illegal notice to end this tenancy without using RTB forms. Without any valid notice to end tenancy from the landlord, I find that the tenant made her own decision to end this tenancy. As such, I find that she is fully responsible for any costs associated with ending her tenancy, including her moving costs, gas costs and administrative costs, none of which she documented by receipts. For this reason, I dismiss the tenant's application for a monetary award for any costs associated with the tenant's decision to end this tenancy without leave to reapply.

I also note that parties are responsible for their own costs of preparing and presenting their evidence for consideration at a dispute resolution hearing. The tenant has not applied to recover her filing fee, the only such fee normally recoverable by an applicant.

I dismiss the remainder of the tenant's application for a monetary award for losses and damages arising out of this tenancy without leave to reapply. In coming to this determination, I find that the tenant's application for a monetary award was excessive to the extreme. While I appreciate that the tenant is of the opinion that each technical contravention of the *Act* by the landlords entitled her to monetary awards, I do not find that she has provided sufficient evidence to substantiate her allegations that additional monetary awards beyond those outlined above flow from the landlords' alleged actions.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to recover losses in value in her tenancy agreement and damages arising out of this tenancy:

Item	Amount
Reduction in Value of Tenant's First Month of this Tenancy ($\$750 \times 12/30 \times 75\% = \225.00)	\$225.00
Award for Loss of Quiet Enjoyment of the Rental Premises	200.00
Total Monetary Order	\$425.00

The tenant is provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the remainder of the tenant's application without leave to reapply.

In coming to my determination regarding this tenancy, I find that the period whereby the landlords were entitled to monthly rent extended from September 15, 2012 until March 14, 2012, a six-month period. I find that by oral agreement shortly after the tenant commenced occupancy of this rental unit on August 29, 2012, the parties agreed that the premises were unfit for residency until September 15, 2012, by which time the tenant expected to take occupancy of the rental unit. The tenant's responsibility for paying monthly rent commenced on September 15, 2012.

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 02, 2013

Residential Tenancy Branch