



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF; MNR, MNDC, MNSD, OLC, FF, O

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72; and
- an "other" remedy.

The landlord did not attend this hearing, although I waited until 1415 in order to enable the landlord to connect with this teleconference hearing scheduled for 1330. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that he served the landlord with the dispute resolution package on 13 February 2015 by registered mail. The tenant provided me with a Canada Post tracking number. On the basis of this evidence, I am satisfied that the landlord was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Preliminary Issue – Disposition of Landlord's Claim

Rule 10.1 of the Rules of Procedure provides that:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any testimony or submissions from the landlord and in the absence of the landlord's participation in this hearing, I order the landlord's application dismissed without leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for repairs? Is the tenant entitled to a monetary award for the return of a portion of his pet damage and security deposits? Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement? Is the tenant entitled to an order that the landlord comply? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

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

This tenancy began 1 August 2004. I was provided with a copy of the tenancy agreement. The tenancy agreement sets out that the tenant is responsible for paying hydro costs. The tenant testified that rent at the end of the tenancy was \$950.00. The tenant testified that each month he would contribute \$100.00 towards utilities and that the amount would be reconciled at the end of the year. The tenant testified that the

approximately utility costs were usually about \$1,000.00 and the tenant would be issued a refund of approximately \$200.00.

I was not provided with a condition move in or move out inspection report in respect of this tenancy.

The rental unit is contained within a house. Prior to 31 August 2014, the upper unit was occupied by two others. The occupants of the residential property shared the foyer area of the rental unit. From 31 August 2014 until the end of the tenancy only the tenant occupied the residential property.

The tenant testified that there were issues with mice in late 2013 and early 2014. The tenant testified that he purchased items to eradicate the mice. I was provided with photographs of the mouse remains.

On 28 June 2014, the landlord attacked the tenant verbally. I was provided with a written statement from a neighbour GP. GP stated that he heard loud yelling from outside. GP stated that he observed the landlord yelling at the tenant. GP stated that this went on for approximately 10 minutes.

On 10 September 2014, the tenant returned from working a night shift. The tenant testified that the landlord threatened him. In particular the landlord threatened both the tenant and his personal property. The tenant testified that the police were called.

The tenant testified that from 15 September 2014 to 6 November 2014 construction occurred five days a week. The tenant testified that construction would occur between the hours of 0730 and 1700.

On 15, 23 and 25 September 2014, the tenant wrote to the landlord to ask him to provide a schedule of planned renovations. The tenant testified that the landlord did not provide a schedule. The tenant also asked the landlord to remember to lock the door leading into the foyer as he had found it unlocked on several occasions.

The tenant testified that he is a nurse and often works night shifts. The tenant testified that the work resulted in loss of sleep. As a result of the construction noise the tenant had to sleep at his sister's home for some nights. The tenant testified that as a result of the threats he was fearful and would sleep with his door barricaded.

On 1 October 2014, the landlord yelled at the tenant and called him names. The tenant stated that he found that the landlord left the front door unlocked many times while the

renovations were ongoing. The tenant testified that he repeatedly asked the landlord to secure the front door.

The tenant testified that in early October he returned to find his belongings strewn outside. The tenant testified that his belongings were damaged at this point including a coat rack and a cover to a fire pit.

The tenant testified that the landlord was completing landscape work. The tenant testified that after the landlord left he found his trees in the pile of yard refuse. The tenant testified that his Douglas firs were cut at the stems and the cedars were pulled out by the roots at a later date. The tenant submits that the most likely explanation for the damage to the trees is that the landlord damaged them.

The tenant provided me with photographs of some of the belongings he alleges the landlord broke:

- In one photograph a wooden coatrack can be seen in the front yard near a broken bathtub.
- In another photograph, the wooden coat rack is seen broken in half.
- In a photograph the spark screen is seen smashed in with a cinder block.
- In a photograph the Douglas firs are seen cut at their bases.

I was provided with photographs that show the yard littered with construction debris and broken glass. I was provided with a photograph that shows yard waste piled in front of the garage.

A stop work order was issued by the municipality on 6 November 2014 as a result of complaints from neighbours and the unpermitted work occurring.

The tenant provided me with estimates for the replacement costs of his broken coat rack, spark screen, trees, and planter. The tenant testified that, to this best of his knowledge, the replacement estimates are equivalent to the lost items.

- The tenant provided me with an estimate for the coat rack in the amount of \$32.38.
- The tenant provided me with an estimate for the cost of replacing the two Douglas firs of \$75.00 each.
- The tenant provided me with an estimate for the cost of replacing the three cedars of \$15.00 each.
- The tenant provided me with an estimate for the cost of replacing the planter in the amount of \$12.82.

- The tenant provided me with an estimate for the cost of replacing the spark screen in the amount of \$129.00.

The tenant testified that as a result of the construction, threats, and damage to his personal property, he did not feel safe living in the rental unit. The tenant testified that he felt his only option was to leave. The tenant provided an estimate for his moving costs in the amount of \$644 to \$774. The tenant testified that he paid approximately \$650.00 for moving.

The tenant provided his forwarding address in writing to the landlord on 19 January 2015. The landlord applied for dispute resolution on 5 February 2015.

The tenant claims for \$3,169.84:

Item	Amount
Replace Coat Rack	\$32.38
Replace Spark Screen	129.00
Replace Douglas Fir Trees	150.00
Replace Cedar Trees	45.00
Replace Planter	12.82
Mouse Eradication Supplies	15.93
Moving Costs	650.00
Loss of Quiet Enjoyment	1,500.00
Return of Security Deposit	350.00
Interest on Security Deposit	12.41
Return of Excess Hydro Amounts	200.00
Filing Fee	50.00
Photographs	22.30
Total Monetary Order Sought	\$3,169.84

Analysis

Subsection 26(3) sets out that a landlord must not prevent or interfere with the tenant's access to the tenant's property.

The tenant has provided sworn and uncontested testimony that the landlord through his direct action or neglect interfered with the tenant's access to property by seizing and destroying it. I find that the landlord was the only other person with access to the foyer area and that either he or persons he permitted to be in that area caused the damage to the tenant's coat rack and spark screen. I find, on a balance of probabilities, that the

most likely conclusion was that the landlord caused the damage to the Douglas fir and cedar trees as well as the planter. I reach this finding even though the trees were in the yard and publically accessible. I make this determination because of the landlord's prior interference with the tenant's belongings as well as threats he made against the tenant's personal property. On the basis of these findings, the landlord has unlawfully interfered with the tenant's personal property contrary to subsection 26(3) of the Act. As a result of this interference the landlord caused the tenant damage.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The tenant has provided estimate replacement costs for the damaged personal property. The tenant provided sworn and uncontested testimony that the estimates for replacement were for products that are comparable to the damaged property. I find that the tenant's estimated replacement costs are reasonable. The tenant is entitled to the full amount claimed for the coat rack, spark screen, trees, and planter.

The tenant claims for the cost of his mouse eradication efforts. Pursuant to section 33 of the Act, the only repairs recoverable under the Act are those in relation to emergency repairs. Section 33 of the Act describes "emergency repairs" as those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures
- the primary heating system
- damaged or defective locks that give access to the rental unit
- the electrical systems
- in prescribed circumstances, a rental unit or residential property

Vermin control is not an emergency for the purposes of the Act. Accordingly, the tenant is not entitled to compensation for his mouse control efforts.

The tenant seeks a monetary order in the amount of \$1,500.00 for breach of the tenant's right to quiet enjoyment.

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit. Quiet enjoyment includes:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

In this case the landlord has threatened the tenant on several occasions, been verbally abusive, interfered with and destroyed the tenant's property, as well as engaged in illegal renovations that disturbed the tenant. The verbal abuse occurred on three occasions, and the construction noise occurred over the course of two months. The landlord caused the tenant to be fearful in his own home and to feel the need to sleep with his door barricaded. The landlord caused damage to hundreds of dollars of the tenant's personal property. I find that this conduct amounts to a breach of the tenant's right to quiet enjoyment pursuant to section 28 of the Act. On the basis of the nature of the disturbance, which went directly to the tenant's safety in his own home, I find that the tenancy was devalued by 50% over the course of the interference from 28 June 2014 to 16 December 2014. Over this time \$5,525.00 in rent was paid. The total value of the loss is \$2,612.50. The tenant has elected to claim \$1,500.00. I allow the tenant the full amount of his claim.

As a result of the landlord's breach of quiet enjoyment and the landlord's unlawful interference with the tenant's personal property, the tenant felt that he had no choice but to move. As a result the tenant incurred moving costs. I find that the landlord's breaches of the Act resulted in the tenant incurring this cost. I accept the tenant's estimate and testimony of his moving costs as \$650.00. The tenant is entitled to the full amount of his moving costs.

I have not been provided with any evidence that indicates that the landlord was lawfully entitled to retain any amount of the security deposit. As such, the tenant is entitled to return of his security deposit plus interest. Over the tenancy \$12.41 of interest accumulated.

Residential Tenancy Policy Guideline, "17. Security Deposit and Set off" sets out that:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
- If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;
- If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim.

At the hearing the tenant indicated that he was not waiving his right to doubling.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receipt of the tenant's forwarding address in writing. However, the landlord's right to claim against the security deposit is extinguished if the landlord fails to complete condition move in or move out inspections. The tenant did not provide me with evidence that would indicate that the landlord's right to claim against the security deposit was extinguished. Without this evidence, I am not satisfied that the landlord's rights have been extinguished. The tenant has leave to reapply for this compensation if he is able to provide evidence that the landlord's rights have been extinguished.

The tenant applied for return of his estimated utilities over payment. The tenant testified that this is an estimate because the landlord has not provided the substantiating invoices for the bills as agreed to. I find that the parties' course of conduct indicates the terms of the tenancy agreement. I find that it is a term of the tenancy agreement that the landlord will provide accounting for the utilities amounts. I will not order return of any amount until there has been a proper accounting. This accounting is required by the tenancy agreement. I order the landlord to provide copies of the utilities invoices to the tenant. The tenant may apply for return of overpaid amounts after this accounting is complete.

The tenant has claimed for his costs associated with providing photographic evidence the costs associated with serving documents in these proceedings. These costs are best characterized as "disbursements" incurred in the course of these proceedings.

Section 72 of the Act allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding costs are provided for in court proceedings, they are specifically not included in the Act. I conclude that this exclusion is intentional and includes disbursement costs. Furthermore, I find that disbursements are not properly compensable pursuant to section 67 of the Act as the landlord's contravention of the Act is not the proximate cause of the expense.

I find that the tenant is not entitled to compensation for the photograph costs as disbursements are not a cost that is compensable under the Act.

As the tenant has been successful in his application, he is entitled to recover his filing fee from the landlord.

Conclusion

The landlord's application is dismissed without leave to reapply.

The landlord is ordered to provide an accounting of utilities.

I issue a monetary order in the tenant's favour in the amount of \$2,931.61 under the following terms:

Item	Amount
Replace Coat Rack	\$32.38
Replace Spark Screen	129.00
Replace Douglas Fir Trees	150.00
Replace Cedar Trees	45.00
Replace Planter	12.82
Moving Costs	650.00
Loss of Quiet Enjoyment	1,500.00
Return of Security Deposit	350.00
Interest on Security Deposit	12.41
Filing Fee	50.00
Total Monetary Order	\$2,931.61

The tenant is provided with a monetary order 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 this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: August 19, 2015

Residential Tenancy Branch

