



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, RP, FF

Introduction

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by registered mail on August 28, 2015. I find that the Amended Application for Dispute Resolution was sufficiently served on the Landlord by mailing, by registered mail to where the landlord resides on September 21, 2015.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling a one month Notice to End Tenancy for cause?
- b. Whether the tenant is entitled to an order cancelling a two month Notice to End Tenancy for landlord use?
- c. Whether the tenant is entitled to an order for the cost of emergency repairs?
- d. Whether the tenant is entitled to an order for the abatement of past or future rent and if so how much?
- e. Whether the tenant is entitled to a monetary order?

Background and Evidence

The tenant and her two young children live in a bedroom in the basement of the rental property. They share the common area including the upstairs living room, kitchen bathroom etc. with another tenant and her child. The landlord lives in a different community.

The tenancy began on June 1, 2015. The rent was originally \$750 per month payable in advance on the first day of each month. The rent was reduced to \$700 commencing August 1, 2015. The tenant testified the tenancy was fine until early August as the landlord did not attend the rental unit.

The tenant testified that on August 9, 2015 she received an abusive telephone call from the landlord that she (the landlord and friends) were going to the residence the following weekend and the tenant better "Get the f---k out of the rental unit."

The tenant testified she and her children were forced to leave the rental unit because of harassment and threats from the landlord on the following dates: August 15, 16, 17, 22, 23, 24, 29 and 30.

The police were called approximately 8 times during this period.

In late August the landlord changed the locks to the rental unit thereby preventing the tenant from accessing her unit and her belongings. The police were called. They suggested to the tenant she should change the locks. A day later the tenant was advised by the landlord that the landlord had changed the locks again and had thrown the tenant's belongings outside.

The tenant vacated the rental unit on September 2, 2015. The tenant does not wish to return to the rental unit.

Analysis:

The landlord has not served a one month Notice to End Tenancy or a two month Notice to End Tenancy on the tenant. The tenant does not wish to continue with the tenancy. As a result I dismissed the tenant's application to cancel the one month Notice to End Tenancy and the two month Notice to End Tenancy.

The tenant did not pay for emergency repairs. As a result her claim for the cost of emergency repairs is dismiss.

Tenant's Application for a monetary order and an abatement of past rent:

Section 7 of the Residential Tenancy Act provides as follows:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 28 of the Residential Tenancy Act provides as follows:

Protection of tenant's right to quiet enjoyment

- 28** 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.

Section 29 of the Residential Tenancy Act provides as follows:

Landlord's right to enter rental unit restricted

- 29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
 - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes 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;

- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The landlord failed to comply with the Act, Regulations and tenancy agreement and tenant is entitled to compensation for the losses that resulted. The landlord's actions breached the Residential Tenancy Act and were illegal. They were abusive, breached the covenant of quiet enjoyment and subjected the tenant to harassment and intimidation. I determined the landlord illegally ended the tenancy on September 2, 2015 when she changed the locks and threw out the tenant's belongings.

With respect to each of the tenant's claims I find as follows:

- a. I determined the tenant is entitled to \$176 for the cost of hiring a U-Haul truck to move her belongings.
- b. I determined the tenant is entitled to \$19.93 for the cost of a new lock after the landlord had illegally changed the locks.
- c. I determined the tenant is entitled to \$755.52 for the cost of staying in a motel for 8 days until more permanent accommodation could be found.
- d. I determined the tenant is entitled to \$72 for the cost of food spoiled after the landlord threw out all of the tenant's belongings.
- e. The tenant was forced to leave the rental unit for 8 days because of the landlord's threats and abuse. The abuse started with a telephone call on August 9, 2015. I determined the tenant is entitled to recover half of the rent for August or the sum of \$350.
- f. I determined the tenant is entitled to \$200 for room and board she paid to her mother after she was forced to leave the rental unit with her children because of the threats and intimidation.
- g. The tenant seeks the sum of \$5000 for aggravated damages. Policy Guideline #16 includes the following:

Types of Damages

...

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.)

Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

- 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.

I determined the actions of the landlord in threatening the tenant, illegally changing the locks, continuing with the intimidation even after the police had been called on numerous occasions, throwing out the tenant's belongings were intentional and showed a wilful or reckless indifference to her obligations as a landlord under the Act and to the tenant. They caused the tenant significant physical inconvenience (the tenant was forced to leave the house on 8 occasions and forced to stay in a motel after her belongings were wrongfully thrown from the rental unit). This amounted to a significant breach in the covenant of quiet enjoyment, pain and suffering and mental distress. The problems were worse as the tenant has two small children. The damage was of a type that the landlord should reasonably have foreseen would cause damage. It was of significant depth and duration to warrant an award of aggravated damages. The tenant seeks compensation in the sum of \$5000. I determined that as the problems were limited primarily to the last half of August and first couple of days of September. I determined the tenant is entitled to \$1000 in aggravated damages.

Monetary Order:

I ordered the landlord(s) to pay to the tenant the sum of \$2573.45.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the 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 section 9.1(1) of the Residential Tenancy Act.

Dated: October 07, 2015

Residential Tenancy Branch

