Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, ERP, RP, PSF, LRE, LAT, FF

Introduction
This hearing was originally set for October 2, 2015. At the request of the landlord and with the consent of the tenant the hearing was adjourned to October 20, The hearing started on that date but as the parties were not able to complete their testimony within the time allotted, the hearing was continued on October 29 at 3:00 pm, a date and time convenient to both parties. Both parties gave affirmed testimony.

Service of evidence by each party was a problem throughout this hearing. Prior to the first date set for hearing the tenant had filed two evidence packages with the Residential Tenancy Branch. Each package consisted of written material and a USB stick. As set out in the second Interim Decision given in this matter, it appeared to me that both packages are the same except the large package had a few additional photographs. The tenant would not confirm that this was the case.

At the first day set for hearing the tenant testified that she had posted an evidence package on the landlord's door and had sent him a copy by ordinary mail. On the second date of the hearing the tenant testified that she had made an error. She said she had been taken by surprise at being asked to prove service and had made an error. She testified that she sent an evidence package to the landlord by registered mail and provided me with a Canada Post tracking number.

I checked the number on the Canada Post website. It showed that an item had been mailed on September 26 and signed for by the landlord on October 3. The landlord said he had received an item but it only contained documents relating to a separate hearing between the parties scheduled for November 19. The tenant said she had included the documents for both hearings in two separate envelopes placed inside one large envelope. The landlord insisted he never received a copy of the tenant's evidence package.

Between the first and second dates of the hearing the tenant filed additional digital evidence. The landlord said he had not received it. The tenant said she did not have a tracking number for the item on hand.

Prior to the second date set for the hearing the landlord filed a 75 page evidence package. The tenant said she had not received it. The landlord said he had sent it to the tenant by UPS. He

was also taken by surprise at having to prove service of evidence and did not have a tracking number of any other proof of service.

At the end of the hearing on October 20 there was a discussion about how to ensure that each side had the other's evidence so it could be considered by me when making my decision. The parties agreed that they would meet at 7:00 pm on October 27 to exchange their respective evidence packages. The landlord, who lives in the upper level of the house, would come to the tenant's unit on the lower level. Each party was to have prepared a receipt for the other to sign as proof of service and was to fax the signed receipt to the Residential Tenancy Branch.

The continuation of the hearing was set for October 29.

On October 29 both parties appeared. The tenant said that as a result of an incident between herself and the landlord she was forced to move out of the rental unit before October 27. She would not confirm the date on which she moved; she said she had paid rent to the end of October and she was maintaining possess until October 31.

The landlord said the tenant was out of the rental unit by October 25. He found a letter from the tenant posted to his door on October 26 regarding the move-out inspection. The tenant did not contact him on Tuesday October 29 and did not return to the house on October 27 to exchange evidence. The tenant's response was that she did not want to talk to the landlord, did not want to deal with him and therefore did not go to the rental unit. She took the position that she had served her evidence and provided proof of service.

The *Rules of Procedure* provide that all parties must be able to demonstrate to the satisfaction of the arbitrator that the other side has been served with all their evidence (rules 3.5 and 3.16).

I have heard hundreds of applications for dispute resolution. This is only the third hearing in my experience in which there was an ongoing inability by the parties to exchange their evidence in a reasonable manner and to be able to provide proof that they had done so. Common methods of proof of service are filing copies of the registered mail receipt; a photograph of the evidence package posted to the door of the rental unit that includes some indication of the date on which the photograph was taken; or serving the evidence with a witness who can provide a statement.

The tenant did not file any evidence of service of the last evidence package on the landlord.

I am not satisfied that the tenant did serve the first evidence package on the landlord for the following reasons:

- Her evidence on the method of service, regular mail or registered mail, was not consistent.
- A registered mail receipt is proof that an envelope has been received by the addressee but it is not proof of the contents of the package if that becomes an issue.

- All uncertainty could have been removed if the tenant had complied with the undertaking she made in the hearing on October 20. If the tenant did not want to meet the landlord alone she could have arranged to have someone else meet him on her behalf and exchange the evidence for her; she could have had someone accompany her; or she could have asked the police to accompany her to keep the peace. She did not take any steps to live up to the undertaking she had made.

I am not satisfied that the landlord served his evidence on the tenant because he did not provide the tracking number or other receipt for the UPS parcel.

As a result of the parties inability to prove service of their evidence packages, despite several opportunities to do so, none of the written or digital evidence submitted by either party will be considered as evidence in this proceeding. Only the parties' sworn oral testimony and the evidence filed with the tenant's original application will be considered in the preparation of this decision.

The amended Application for Dispute Resolution will not be considered for the same reasons as it was served with the tenant's first evidence package.

Part of that amendment was to add requests for orders limiting the landlord's right of entry and allowing the tenant to change the locks. Both applications became irrelevant once the tenant vacated the rental unit.

Similarly the applications for orders compelling the landlord to comply with the Act, regulation or tenancy agreement; to make certain repairs; and to provide services or facilities required by law became moot once the tenant vacated the rental unit.

Issue(s) to be Decided

Is the tenant entitled to a monetary order and, if so, in what amount?

Background and Evidence

This month-to-month tenancy commenced in July, 2015. The tenant paid a pro-rated rent for that month. The monthly rent of $900.00 is due on the first day of the month. The rent includes garbage collection and parking for one vehicle, among other services.

The rental unit is a one bedroom ground level unit. It has a separate entrance at the back of the house. The landlord lives upstairs.

The tenant is a full-time student. The landlord works in remote areas. His usual work schedule is two weeks in, one week out. He has been away from home more than usual because of family health issues in another party of the province. He is divorced and his children and girlfriend are only at the house when he is there. When he is away, the house is generally empty.

There is a paved driveway at the front of the house. The parties described it as two or one and a half vehicles wide. The gravel driveway extends into the back yard. It is common ground that the landlord has a variety of work, personal and recreational vehicles and equipment. Some of this equipment is stored in the back yard and gets moved in and out of the back yard via the gravel driveway.

The tenant testified that when she looked at the rental unit the landlord pointed to the side of the driveway and told her that's where she could park. The landlord testified that she could park on the gravel area when he did not need it; that he explained to the tenant that he would need access to the back yard from time to time; and that when he was not at home she could park anywhere in the driveway. The tenant denied the landlord's version of the conversation.

The parties testified that early in the tenancy the landlord sent the tenant a text saying that his truck had been dented and asking her if she had seen anything when she was moving in. The tenant said she thought this was an accusation and that the landlord's purpose in sending this inquiry was to intimidate her into not parking in the driveway. The landlord's position is that it was just an inquiry.

There was further acrimonious exchange of electronic communications when the landlord asked the tenant to move her vehicle so he could move his vehicles around. The landlord asked the tenant not to park in front of the house but on a different street, which he did this. This was not convenient for her and she advised the landlord of that fact.

The landlord testified that through out their communications he told the tenant that when he was away she could park anywhere on the driveway. The tenant testified that she parked in the driveway once when the landlord was away. The landlord's girlfriend drove up to the house at that time. The tenant felt that the look the girlfriend gave her was hostile and she has parked on the street in front of the house ever since.

She testified that she does not know the landlord's schedule and it is easier if there was a set arrangement for parking. She argued that parking should not be included as a service on a tenancy agreement if it really means parking on the street.

The tenant testified that the landlord bombarded her with text messages, emails and telephone calls at the start of the tenancy. She said she received 100 text messages by the end of July. She also stated that she is not a phone person. The tenant said the volume and tone of the texts were intimidating. The landlord testified that he was not home for the first tow weeks of July and that at first many of his texts were jokes. The tenant agreed that this was the case.

The tenant testified that she wanted to put some rules around their communications so she advised the landlord that he was no longer permitted to email or text her; that she was not accepting telephone calls; and that the only communication she would accept was letters

delivered by Canada Post. She said that e-mail is a privilege and she is entitled to say no. She interpreted any communication from the landlord by a means other than Canada Post as harassment.

The landlord testified that because of his work situation the only means of communication that is readily available to him is e-mail. The tenant posted letters and notices to him on his door. He asked her not to do that but she persisted. She testified that this seemed to be an effective means of communicating with the landlord so she continued with this practise.

When the tenant moved into the rental unit there was a portable electric heater in it. The landlord told her it was for her to use. By September 14 the relationship between the landlord and the tenant had soured. The landlord was in the rental unit on that day making some repairs. He testified that he had a use for the heater so he took it. Eventually the tenant replaced the heater at a cost of $59.99 plus tax.

Another dispute was over the garbage and recycling. The landlord testified that at one point he was so upset with the tenant and some of her actions that he told her he was withdrawing garbage pick-up as a service and put the garbage bins in the garage so she would not be able to access them. Also in frustration with what he perceived as the tenant's refusal to handle the garbage and recycling in a responsible and considerate manner he piled garbage and/or recycling outside the door to the rental unit.

Inspections of the unit were another sore point. The tenant testified that he had some concerns about conditions in the unit, particularly humidity levels, based upon some observations. The tenant disputes the existence of any concerns and was of the view that the landlord's requests were not based on any legitimate grounds.

Considerable evidence was devoted to the landlord's entry of the rental unit on September 14. The landlord says he posted a 24 hour notice of entry on September 10. AS it turned out he was not able to make it on that day so on September 11 he communicated with the tenant about coming on a different date. The tenant told him she would be at home on September 13. The landlord testified that the 13th was not a good day for him as he was with his children that day. He says he posted a notice of entry for the Monday, September 14. The tenant denies receiving any notice and says the landlord deliberately waited until she would be away from home. This is the occasion when the landlord removed the space heater.

The parties had a dispute about the tenant's access to the mailbox. At first the landlord promised the tenant a key to the mailbox but when the landlord/tenant relationship soured she refused to do so. He testified that in light of the tenant's behaviour he was not going to risk her having access to his mail. He also testified that he never received a single piece of mail with the tenant's name on it. The tenant argues that whether she ever received any mail or the landlord trusted her was irrelevant; she is entitled to receive mail at her residence.

The parties had a number of highly acrimonious exchanges on other topics including the calculation of the prorated rent for July.

Analysis

Section 65(1) of the *Residential Tenancy Act* allows an arbitrator who finds that a landlord or a tenant has not complied with the Act, regulation or tenancy agreement to, among other remedies; reduce past or future rent by an amount equivalent to a reduction in the value of the tenancy agreement.

Section 7(2) requires any landlord or tenant claiming compensation for damage or loss resulting from the other's non-compliance with the Act, regulation or tenancy agreement to do whatever is reasonable to minimize the damage or loss.

The tenancy agreement did specify that parking for one motor vehicle and garbage removal was included in the rent. Further the landlord did leave the portable heater in the rental unit at the start of the tenancy and did specifically tell the tenant it was there for her use.

The landlord was wrong when he notified the tenant that garbage service was being unilaterally removed; when he hid the garbage cans; when he put garbage and recycling in front of the tenant's door; and when he removed the space heater from the rental unit. All of these actions were contrary to the terms of the tenancy agreement drafted by the landlord and did reduce the value of the tenancy to the tenant. I award the tenant the sum of $270.00, which represents a 10% reduction of the rent paid for August, September and October.

No award is given for loss of parking. The initial blow-up could have been avoided if the tenant had been a good neighbour and accommodated her landlord's request to move her vehicle on that date. The tenant's decision to park her vehicle on the street thereafter is her decision. Parking on the driveway was available if she chose to use it. The tenant did nothing to mitigate her damages as required by section 7(20.

No award for lack of access to the mailbox will be made. It was not specifically provided for on the tenancy agreement and there was no evidence that the tenant experienced any loss because of a lack of access.

Although entry to the unit was hotly debated by the parties, and both took positions based upon their understanding of the law, neither was entirely correct. Detailed information about landlord access is set out on the Residential Tenancy Branch website. A notice that is posted to the door of a rental unit is deemed delivered three days after it is posted, so if a landlord wants to enter a unit on a particular date they must post the notice of entry four days before. The website also sets out that a landlord may enter a rental unit once per month to inspect the condition of the property as long as proper notice is provided. No other conditions are attached to the rental unit.

The law regarding claims for loss of quiet enjoyment is summarized in Residential Tenancy Policy Guideline 6: Right to Quiet Enjoyment. The Guideline sets out the historical interpretation of loss of quiet enjoyment and then explains that in modern times, "tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment, however, it would ordinarily be necessary to show a course of repeated or persistent threatening behaviour".

The Guideline explains that frequent and ongoing interference by the landlord may form the basis for a claim of breach of quiet enjoyment. Although some of the landlord's action complained about by the tenant, namely, entering the rental unit without proper notice or intentionally removing or restricting services, may, if serious enough, form the grounds for a claim for loss of quiet enjoyment. In this case, the evidence doe not show serious examples of any of these behaviours. Further, the tenant has already been awarded compensation for the withdrawal of services.

Although the tenant said she felt intimidated and threatened by the landlord it is my conclusion after listening to her in the hearings that she was not intimidated by the landlord but was intensely annoyed by him. In all of their interactions she appears to have given as good as she got. Further, she appears to have expended considerable effort in attempting to ensure that he conditions of the tenancy and her interaction with the landlord were all on her terms.

As a consequence, I find do not find that the tenant has been harassed by the landlord and I dismiss any claim for compensation on this ground.

As the tenant was partially successful on her application I find that she is entitled to reimbursement of half of the fee she paid to file it, $25.00.

Conclusion

I find that the tenant has established a total monetary claim of **$295.00** comprised of damages in the amount of $270.00 as detailed above and $25.00 as partial reimbursement of the fee paid by the tenant for this application. Pursuant to section 67 I grant the tenant a monetary order in this amount. If necessary, this order may be filed in the Small Claims 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: November 26, 2015

Residential Tenancy Branch