



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR RP ERP RR PSF

Introduction

Both parties were present at the hearing and confirmed personal service of the Notice to End Tenancy dated March 3, 2016 to be effective March 13, 2016 and personal service of the tenant's Application. The tenant requests pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46;
- b) To do emergency and necessary repairs pursuant to sections 32 and 33;
- c) To allow the tenant to reduce rent for repairs not done and for facilities not provided;
- d) To order the landlord to provide a key to the mailbox;
- e) For a monetary order for disturbance of peaceful enjoyment and as reimbursement for repairs and for facilities which are included in the lease but not provided ;
- f) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is unpaid rent so sufficient cause to end the tenancy? Or is the tenant entitled to any relief?

Has the tenant proved on a balance of probabilities that the landlord has neglected to do necessary and emergency repairs as required by sections 32 and 33 of the Act?

Has she proved the landlord through act or neglect has failed to provide her with a mailbox key and has unreasonably disturbed her peaceful enjoyment contrary to section 28 of the Act and entered her suite illegally contrary to section 29 of the Act? If so, to how much compensation has the tenant proved entitlement?

Preliminary Issue:

The realtor had submitted a letter concerning his entry. The tenant strenuously objected and he asked it be withdrawn and he be summonsed if necessary to give

evidence. The landlord's lawyer requested that I issue a summons and adjourn the hearing if I deemed it necessary to hear his evidence. After considering the evidence provided in this 80 minute hearing, I considered his evidence would not add useful and relevant material so I provide no summons and have not adjourned the hearing.

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced October 15, 2015, rent is \$1080 a month plus hydro and a security deposit of \$540 was paid in October 2015. The landlord served a Notice to End Tenancy for unpaid rent and utilities on March 5, 2016 to be effective March 12, 2016. The agreed evidence is that the tenant paid the outstanding rent in time but no utilities. The tenant said the hydro issues were settled in the previous hearing. The landlord said they have not been settled and they hope this arbitration will impose proportionate hydro costs between 3 units. To date, the landlord has been billing the tenant for hydro for all 3 units. The landlord said she occupies a unit of 400 sq. ft., there is another unit of 400 sq. ft. and this tenant's unit is 1050 sq. ft. The tenant disagreed and said her unit was only about 700 sq. ft. Each of the 400 sq. ft. units are occupied by one person but the tenant has 5 occupants, 4 children and herself. Hydro bills were provided as evidence of costs before this tenant occupied her unit and after as follows:

1. Oct. 15, 2014 to Dec. 31, 2014: \$259.81
2. Jan. 1, 2015 to March 3, 2015: \$247.47
3. Mar. 4, 2015 to March 31, 2015: \$92.28 (short period for change in tenancy)
4. Sep.30, 2015 to Nov. 2, 2015: \$235.79
5. Nov. 3, 2015 to Dec. 31, 2015: \$712.13
6. Jan. 1 to Mar. 2, 2016: \$870.37

The Orders of the previous Arbitrator from Decision dated March 9, 2016 were reviewed and the tenant agreed she changed the locks on her doors and the landlord does not have keys. She said however, the landlord is still not providing legal notice to enter her suite in accordance with section 29 of the Act. When questioned, she said the landlord or agents did not comply with all the provisions regarding service etc. She said the Notices were posted on her front door but she seldom uses it so often does not see them; furthermore, if they are posted on the door, they are deemed to be received 3 days after posting. She said 4 or 5 Notices were posted and she has allowed about 7 people to go through the unit as it is for sale.

It was agreed that she received a new washing machine on March 24, 2016 but the arbitrator had ordered it to be replaced by March 18, 2016. The landlord said it was ordered March 16, 2016 but they could not deliver until March 24, 2016. The tenant

agreed that a professional pest control company came in response to the order but she said they did nothing. The landlord said she had a Professional Pest Control company come on December 9, 2015 and he recommended cleaning and removing all food access. When he returned on March 24, 2016, he found no rodents but said cleanup was still needed and he recommended plugging of holes around pipes. She said her ex-husband did this. The tenant said the landlord provided no Notice of Entry for pest control, entered her suite illegally, scattered rodent droppings and took pictures. The landlord said she entered on December 9, 2015 without notice for the tenant was very worried about rodent droppings so the landlord considered it an emergency for health and safety reasons as rodents can carry a virus. She called the exterminator that day and they entered to deal with the problem. She said she sent an email apologizing to the tenant. She said she has not entered the tenant's unit since the last hearing.

In respect to the other Orders of the arbitrator on March 9, 2016, the tenant confirmed she had deducted the amounts awarded from her April rent. She is requesting a further rent refund of 3 months rent for the issues raised today and for unreasonable disturbance of her peaceful enjoyment.

The tenant said the landlord had locked her in by putting a padlock on the gate on March 1, 2016 and refusing a key to the tenant. This happened only once and the tenant removed the gate from the posts and got out. The landlord said her dog was being continually allowed out due to a gate being left open. Her dog had annoyed neighbours and undergone significant trauma by being picked up and put in the pound. She was trying to solve a problem by locking the gate and asking the tenant to contact her when she wanted to go out so she could unlock it. Since then, the gate is unlocked, there has been a Notice put on the gate and the landlord said it is generally respected. The entire two acres are fenced and the three units are in the middle.

The tenant said her peaceful enjoyment has been further infringed by the landlord turning off the water four times in March 2016. She said she saw it last time and figured out how to turn it back on. She said the landlord told the Police the pump was dry but it was not; a gush of water came out when it was turned back on. The landlord said she noticed on March 3, 2016, the supply of water significantly decreased to her toilet and appliances. It seemed like the well was being drained. The procedure to protect the pump (which costs about \$4,000+ to replace) is to turn it off and wait for the aquifer to refill. She said if she leaves a drip line on too long, the aquifer can drain. However, she said the well has not drained since. She suspected the tenant did something to drain it at the time for it was spring and the well should have been at its highest. Feelings between the parties were extremely hostile and Police were involved 6 times.

The tenant also said there were at least two holes in her floor and the landlord refuses to get anyone to fix it. It is a danger to her children. The landlord said a realtor and a property inspector for a potential buyer were through the unit. They said the floors were tired and had soft spots but it was not a safety issue. She thought the tenant had 'assisted' her bed to go through the floor. She heard banging that week. The tenant denied this and said she was lying in bed when the leg went through the floor. The landlord pointed out that the tenant supplied lots of other evidence but no pictures of these alleged holes.

The tenant also complains about the septic system and electrical issues. She said there is an ongoing fecal smell. The landlord said she addressed this in a letter for the other arbitration. She had the septic tank pumped out in November, 2015 (invoice in evidence). The contractor said the cigarette butts from the other tenant which were lying on top could plug it up and end up costing a lot to fix it. She said there was a smell from a septic backflow in the fall but it seems better since a new high energy washing machine was installed in the tenant's unit. The tank might date from the 1970s but there was a new septic field installed in 2008 before they bought in 2010. The tenant said there is still a backflow problem into her kitchen sink and it makes her stuff mouldy. In evidence is an email dated March 1, 2016 regarding a Notice of Entry (22.5 hours notice) posted on the tenant's door in order to inspect the electrical panel. The tenant emailed back the same day and said the Notice was in violation of the Act and she would not allow entry. She asks the landlord to knock on her door if the power goes out. She says she won't answer but will check the breaker.

The tenant has a further issue with her mail. The landlord had the post box key changed and never gave the tenants a new key. She has to get her mail forwarded to another address for she gets behind in her bills. The landlord said the Post Office changed the locks and the tenants had not asked for a key. She got behind in collecting it in the middle of February but delivered it all as soon as she picked it up.

In evidence are emails between the parties, the hydro bills, interac transfers of rent on March 6, 2016 (\$1000) and March 9 (\$80), statements of the parties, a letter from a neighbour, invoices for a washing machine and services of pest control and septic tank, a letter advising the property was listed for sale as of March 24, 2016, an electrical installation permit and the closed permit, a Barn Rats Mission Statement dated April 3, 2016 which uses feral cats for rat control

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

Policy Guideline 1 of the Residential Policy Guidelines provides information on matters such as shared utilities. It states:

SHARED UTILITY SERVICE

1. *A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable⁵ as defined in the Regulations.*
2. *If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.*

I find the Notice to End Tenancy for unpaid rent and utilities is set aside. The rent was paid within 5 days of service of the Notice so only utilities were outstanding. I find the landlord was billing the tenant for hydro for all three units and had not divided it proportionally. I find it unconscionable to expect the tenant to pay the electric bill for all three units. Although it is difficult to apportion such items, I have been requested to do so by the parties and provided with evidence of past bills and numbers of occupants to assist. In comparing two periods before the tenant moved in with two periods after she moved in, I find the hydro bill increased by \$452.32 for the period between Nov. 3 to December 31, 2015 when compared with a similar period in 2014-15. I find the bill increased by \$622.90 for the period January 1 to March 2, 2016 when compared with the similar period Jan 1 to March 3, 2015. The increase was approximately 70%. When I used the same two bills and calculated on the number of occupants – 5 in the tenant's unit and 1 in each of the other two units, I find the cost would be \$101.73 per occupant for the first period and \$124.33 per occupant for the second period. When multiplied by 5 for the tenant's occupancy, this calculates to about 71% of the hydro use. However, considering the other two units have about 800 sq. ft. to the tenant's 1000 sq. ft. and hydro bills do fluctuate based on other factors such as weather and use of the pump and other appliances, I think it is fair and reasonable to apportion 60% of the hydro bill to the tenant's unit. I find she is responsible for 60% of the hydro cost since the commencement of her lease which would amount to approximately \$949.50 for the last two bills in evidence. According to section 46 of the Act, utilities are considered as rent and a 10 day Notice to End Tenancy may be issued for unpaid utilities. The landlord must present a copy of the utilities bill with the correct calculations and a demand for payment by a due date prior to issuing any Notice.

In respect to the tenant's claims for a monetary order or rent refund for loss of quiet enjoyment and lack of repair, I find her previous hearing held on February 9, 2016 dealt

with many of these same issues and I have no jurisdiction to change another arbitrator's decision. Therefore, I will only consider losses claimed for the landlord not obeying the orders of the previous arbitrator and claims that have arisen for the remainder of February 2016 and to date.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

I find the tenant has claimed loss of her privacy because of the landlord's non compliance with section 29 of the Act and entering her suite illegally. I find insufficient evidence to support her allegations. I find the landlord's evidence credible that she has not entered the tenant's unit since the last hearing. She admitted frankly she had entered in December 2015 because of a perceived health hazard but as stated, I am not going behind February 9, 2016. In any case, a landlord is permitted to enter without notice in case of emergency pursuant to section 33 of the Act. When questioned about her allegation of improper entry, I found the tenant admitted the landlord served the Notices by putting them on her front door but she said she did not go out that way. She said she was deemed to have received them the third day after posting but the notices were for the next day. She provided no copies of these notices. I note that realtors have been showing the unit and I find it improbable that they have not followed the provisions of the Act. I find insufficient evidence that the landlord entered the suite illegally February to April 2016 or that the landlord scattered rat feces in her unit. I dismiss this portion of her claim.

In respect to the other Orders of the Arbitrator, although the hearing was in February and the arbitrator had placed March deadlines for items to be done, I note the Decision was not actually issued until March 9, 2016. I find the landlord acted in a timely fashion to order the new washing machine by March 16, 2016 although it was not delivered until March 24, 2016. I find the landlord engaged a pest control company to address the rat infestation problem on December 9, 2015 even prior to the last hearing and had them come again on March 24, 2016. She has also engaged a Cats for Control method as an ongoing solution. I find from the evidence of the pest control invoices and the landlord that the tenant has not mitigated or minimized her damage by controlling food access and other items to help eliminate the rat problem. I dismiss this portion of her claim.

I find the tenant was able to change the locks and deduct monies awarded from her rent as ordered on March 9, 2016.

I find insufficient evidence of a septic problem caused by act or neglect of the landlord. I find the septic system was serviced on November 30, 2015 and the septic bed was freshly installed in 2008. However both parties agreed there had been a backflow problem from the washing machine into the tenant's unit although it has been better since the installation of a new high energy washing machine. I find this is an issue that has arisen since the last arbitration and it needs to be addressed by the landlord and a professional plumber pursuant to section 32 of the Act and I will so order.

In respect to the landlord withholding mail, I find the weight of the evidence is that it was the Post Office that changed the lock on the box, not the landlord. I find the tenant requested a key by email on February 28, 2016 but was not provided a key. I find this is in violation of the Act and I order that she be provided a key.

Regarding the tenant's claim of ongoing problems with electrical issues, I find the landlord engaged professional electricians on January 14, 2016 and repaired with the necessary permits. I dismiss this portion of her claim.

Regarding the landlord's disturbance of her peaceful enjoyment, I find the landlord locked her inside the gate for one day which caused the tenant hardship. I find the landlord also switched off the water four times in March 2016. Although I find the landlord's evidence credible that this was to save the pump, I find the landlord by this action caused hardship to the tenant and her young children without providing an alternate such as delivery of some water. I do not accept speculation that either of these parties acted maliciously but I find as fact that the tenant suffered hardship due to the landlord's actions whether innocent or not. I find her entitled to a rent rebate for 5

days or \$180 for these five days of inconvenience plus another 5 days for the emotional turmoil caused to the tenant and her children by the landlord's actions (total \$360). Although the tenant claimed \$10 for water bottles, I find she provided no invoice so insufficient evidence of her cost. I dismiss this portion of her claim. Likewise, the tenant claims \$55.60 for mail forwarding, \$50 for faxing and \$50 for emergency floor repair but has provided no invoices so insufficient evidence of her cost of these items. I dismiss this portion of her claim.

I find the weight of the evidence is that the tenant's flooring is in need of repair. The landlord said that realtors and property inspectors had found it was soft and I find the tenant has been emailing often about holes in the floor where her bed went through. Although the tenant provided no photographs of the holes, as the landlord pointed out, I found the tenant's evidence credible on this point. Although the landlord said the tenant caused a hole from a bed because of their poor relations, I find insufficient evidence that the tenant caused any of the holes. I find her flooring should be repaired to eliminate the holes and will so order.

Conclusion:

I find the tenant entitled to recover \$360 for disturbance of her peaceful enjoyment in March 2016. I find her also entitled to recover her filing fee of \$100 as her application had merit. I dismiss certain portions of her claim for the reasons as stated above.

I HEREBY ORDER:

- 1. That the landlord hires a professional plumber by May 15, 2016 to inspect the plumbing of the tenant and correct the backflow problem she encounters when using her washing machine.**
- 2. That the landlord hires competent persons by May 15, 2016 to repair the holes in the tenant's floors.**
- 3. That the landlord forthwith provides a key to the mail box to the tenant if she has not already done so.**
- 4. That the tenant may deduct \$460.00 from her rent for loss of peaceful enjoyment in March 2016 and recovery of her filing fee.**
- 5. That the tenant must pay 60% of the total hydro bill since commencement of her tenancy and reimburse the landlord in this amount by May 30, 2016. Based on the last two bills in evidence, this amount is approximately \$949.50 to March 2, 2016.**

- 6. That the tenant is also responsible for 60% of all hydro bills from March 2, 2016 and these must be paid by the due date after presentation of them by the landlord.**

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: April 20, 2016

Residential Tenancy Branch