



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAV HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OLC LRE MNDC FF

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70; and
- authorization to recover the filing fee for this application (and a previous application) from the landlord pursuant to section 72.

On the first hearing date, an agent attended on behalf of the landlord and requested an adjournment. The landlord's agent testified that the landlord was addressing an emergency on that date. The original arbitrator granted an adjournment and the tenant's application was adjourned to this new date, with a notice of hearing sent by the Residential Tenancy Branch to each party advising them of the date and time. The landlord did not attend this hearing, although I waited until 11:21am in order to enable the landlord to connect with this teleconference hearing scheduled for 11:00am. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The tenant withdrew her application to allow access to the rental unit pursuant to section 70 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*?

Is the tenant entitled to recover her filing fee for this application as well as a previous hearing in January 2016?

Background and Evidence

The tenant testified that she has been a good tenant. She testified that this tenancy began on February 1, 2013, that she pays her rent and follows all the rules of the building. In a previous hearing held January 5, 2016, the tenant applied and was granted an order for emergency repairs as she had no heat and a mice infestation in her rental unit. As a result of that hearing, an arbitrator ordered the landlord to repair the tenant's heat within 24 hours of receipt of the decision and to immediately engage a pest company to resolve the mice infestation.

The tenant testified that she continues to have mice in her unit and she continues to have no heat within her unit. She testified that, despite the previous order from the Residential Tenancy Branch arbitrator and despite ongoing requests for repair and the provision of heat, the landlord has made very minimal efforts to provide heat to her rental unit. The tenant testified that the only steps taken by the landlord were the same steps taken prior to her last application for repairs: the manager would bleed the radiator. She testified that the heat would not last more than two hours after this process. She testified that her hydro bills continue to be very high despite the lack of warmth in her rental unit. She sought to recover \$98.97 – a portion of her last hydro bill. She submitted copies of two hydro bills to show that those bills have continued to be high while she continues to have no heat in her unit.

The tenant testified that, after the previous order and her repeated requests by the tenant in both written form and by telephone, the landlord sent a pest control company to her unit on one occasion in April 2016. She testified that the pest control person identified a hole behind her refrigerator and told her to put the contents of her cupboard in plastic containers. The tenant testified that she spent \$11.75 to purchase plastic containers but they have not reduced the mice infestation.

The tenant testified that she struggles with health issues including anxiety and blood pressure. She testified that she is employed and in very good health otherwise. The tenant testified that she rarely gets sick but, over the course of the last year, the tenant has been sick repeatedly ("most of the winter"). She also testified that she is "petrified" of mice and she is on constant watch for mice in her unit. She testified that she saw a mouse run across her floor while having dinner with her family on June 19, 2016.

The tenant testified that she is grateful that the building manager comes to retrieve and dispose of dead rodents in her unit. She testified that she continues to request action however the pest control has never been redeployed.

The tenant sought an award to compensate her for her out of pocket expense for her hydro bill and the purchase of plastic containers to protect her food. The tenant also sought \$5000.00 in compensation for the effect on her health, wellbeing and ability to enjoy her rental unit home based on both the lack of heat and the mice infestation. The tenant sought to recover her filing fees in both the January 2016 and this application totalling \$150.00.

Item	Amount
Hydro/Heat	\$98.97
Plastic Container	11.75
Loss of Quiet Enjoyment	5000.00
Recovery of Filing Fee for prior Application	50.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$5260.72

Analysis

The tenant sought reimbursement for the cost of plastic containers to protect her food from mice and reimbursement for a portion of her heat/hydro costs. Pursuant to section 67 of the *Act*, in seeking a monetary award from damage or loss, the tenant is required to prove the existence of loss that stemmed from a violation of their agreement or a contravention of the *Act* by the landlord. I find that the tenant has shown these costs would not have been necessary but for the inattention of the landlord to the tenant's repair issues and her requests to have those issues addressed. I also note that the landlord has failed to comply with orders previously issued by the Residential Tenancy Branch based on an application by this tenant. I find the tenant entitled to recover the cost of heating her unit (which was ineffective) in the amount of \$98.97 as well as the cost of the plastic containers in the amount of \$11.75.

Pursuant to section 32 of the *Act* and Residential Tenancy Policy Guideline No.16, "[the] Legislation allows a landlord or tenant to make a claim in debt or in damages against the other party where there has been a breach of the tenancy agreement or the *Act*. Damages [are] money awarded to a party who has suffered a loss which the law recognizes." When a tenancy agreement exists between the landlord and the tenant, both are bound to meet certain obligations. If a landlord fails to meet his obligations and a tenant is subsequently deprived use of a part of their premises, the tenant may be entitled to damages in the form of a rent abatement or a monetary award.

In consideration of the tenant's monetary request for compensation for the two unaddressed repairs in the rental unit, I refer to Policy Guideline No. 6 regarding the right to "quiet enjoyment" including but not limited to a right to freedom from unreasonable disturbance,

Every tenancy agreement contains an implied covenant of quiet enjoyment. A covenant for quiet enjoyment may be spelled out in the tenancy agreement; however a written provision setting out the terms in the tenancy agreement pertaining to the provision of quiet enjoyment cannot be used to remove any of the rights of a tenant established under the Legislation. If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes.

When considering whether there has been a breach of a tenant's right to quiet enjoyment, I must consider whether the landlord has created or allowed a substantial interference to the tenant's enjoyment of their premises. Temporary inconvenience does not constitute a breach of quiet enjoyment however an interference that would give the tenant sufficient cause to end the tenancy would constitute a breach of quiet enjoyment. However, a tenant does not have to end a tenancy to show that there has been such interference. Policy Guideline No. 6 provides the following,

It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

In this case, I find that the landlord has not made efforts to minimize the tenant's disruption or inconvenience. The landlord was previously ordered by a Residential Tenancy Branch arbitrator to make repairs to the heat and to provide pest control for the mice in the tenant's rental unit. I accept the tenant's undisputed testimony that the landlord has not complied with those previous orders made January 8, 2016. I find that the state of the tenant's unit and the effects upon her are beyond nuisance as they have general health implications as well as specific effects on this tenant.

The tenant has shown through her documentary evidence and undisputed testimony that she has repeatedly requested the landlord's assistance in addressing the mice/pest problem. Addressing pest issues within the residential premises is an obligation of the landlord. Under section 32(1) of the *Act*, a landlord is required to provide a residential property in a state of repair that complies with health, safety and housing standards under the law and having regard to the character of the rental unit, make it suitable for occupation by the tenant. Based on the evidence before me, the tenant met her legislated obligations and mitigated her damages by keeping unit clean, taking extra precautions and reporting mice activity to the landlord.

Based on the tenant's undisputed testimony and the documentary materials, I find the landlord did not meet his obligations under the *Act* regarding the mice infestation in the rental unit. The tenant must also provide evidence to of her loss. She testified that she struggles with her blood pressure and it is elevated when she watches mice scurry across her floor throughout the day. She provided evidence and testimony that this situation has been ongoing since 2015. She testified that her health has been impacted generally as well as her ability to relax in her home, to entertain guests and to take pride in her residential premises.

If a tenant is deprived of the use of all or part of the premises, or when the tenant's right to quiet enjoyment has been impacted, the tenant may be entitled to damages. The types of damages an arbitrator may award are; out of pocket expenditures if proved at the hearing in accordance with section 67 of the *Act*; an amount reflecting a general loss where it is not possible to place an actual value on the loss; "nominal damages" where there has been no significant loss or no

significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right; and finally aggravated damages for significant infractions by the landlord to the tenant.

In this case, the tenant has proven that the landlords failed to honour the residential tenancy agreement and their obligations under the Act as well as an order by a Residential Tenancy Branch arbitrator. I find that the tenant has shown a substantial loss in the use of her unit and particularly her right to quiet enjoyment warranting compensation. Therefore, I find that the tenant is entitled to a nominal damage award in the amount of \$2000.00 as well as her out of pocket expenses and recovery of the filing fee for this application (as she has been successful in the application).

I order that the landlord comply with the Act, the residential tenancy agreement and the previous orders issued.

As the landlord has yet to address the previously issued orders, I provide an order that the landlord repair the heat by July 15, 2016. If the landlord fails to repair the heat by July 15, 2016, the tenant may reduce her August 2016 rent by \$75.00. In September 2016, the tenant may reduce her rent for lack of heat by \$100.00 if the repairs have not been completed. In October 2016, the tenant may reduce her rent by \$125.00 if the repairs are not completed. The tenant may continue to reduce her rent in \$25.00 increments each month until the repair to the heat has been completed.

I also provide an order that the landlord address the mice infestation in the tenant's rental unit by July 31, 2016. If the landlord fails to address the mice infestation by July 31, 2016, the tenant may reduce her rent because of the infestation by \$75.00. In September 2016, the tenant may reduce her rent for a mice infestation by \$100.00 if the repairs are not completed. In October 2016, the tenant may reduce her rent for a mice infestation by \$125.00 if the repairs are not completed. The tenant may continue to reduce her rent in \$25.00 increments each month until the repair to the heat has been completed.

As well as these orders and escalating rent reductions, **the tenant is entitled to a monetary order as follows;**

Item	Amount
Hydro/Heat	\$98.97
Plastic Container	11.75
Loss of Quiet Enjoyment	2000.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$2210.72

The tenant applied for recovery of the filing fee for her prior application. The tenant submits that the landlord's failure to comply with the orders of the previous arbitrator should allow her to recover the cost of that application. The prior application was addressed in its entirety and I find that I am not in a position to revisit that decision. I find that the tenant is not entitled to recover the (previous) filing fee.

Conclusion

I grant the tenant a monetary order in the amount of \$2210.72.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

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: June 28, 2016

Residential Tenancy Branch