



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This 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; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord AL (the landlord) attended on behalf of both landlords. The landlord elected to call two witnesses. The tenant elected to call one witness.

No issues of service were raised by the parties.

The tenant seeks compensation in the amount of \$2,827.26 in relation to the landlord's entry on 7 December 2015:

Item	Amount
Repair for Door and Lock	\$945.00
Loss of Quiet Enjoyment	1,000.00
Repair for Door Frame	59.78
Lock	34.71
Door Frame	35.97
Carpet Cleaning	156.50
Veterinarian Costs	595.30
Total Monetary Order Sought	\$2,827.26

Other Dispute Resolution Proceedings

The parties have participated in four prior dispute resolution proceedings before the Residential Tenancy Branch. The parties have two future hearings for dispute resolution scheduled in November 2016.

In the First Decision dated 3 February 2015 the arbitrator found that the landlord had engaged in a series of unlawful rent increases. Accordingly, the rent that had increased from \$775.00 to \$1,035.00 over the course of the tenancy was returned to the last lawfully established amount, which was \$775.00. The arbitrator ordered the landlord to return the amount of the unlawful rent collected and issued a monetary order in the tenant's favour in the amount of \$24,600.00.

In the Second Decision dated 3 September 2015 the arbitrator denied the landlord's application to raise the rent 116%.

In the Third Decision dated 30 December 2015 the arbitrator denied the landlords' application to end the tenancy pursuant to a 2 Month Notice to End Tenancy for Landlord's Use on the basis that the notice was not issued for the correct reason.

In the Fourth Decision dated 24 March 2016 the arbitrator ordered an end to the tenancy pursuant to a second 2 Month Notice to End Tenancy for Landlord's Use.

Issue(s) to be Decided

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 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 testimony, 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 in 1997. Monthly rent was \$775.00.

Testimony of the Tenant

The tenant testified that he received the keys from the landlords in 1997. The tenant testified that he has never changed the locks to the rental unit. The tenant testified that the front door will not close unless it is locked with a key. The tenant admitted that he added a chain lock to the back door.

The tenant testified that in late November and early December the landlord indicated he wished to enter the rental unit. The tenant testified that the landlord would change the time that he would come to the rental unit and that this would cause the tenant to unnecessarily miss work. The tenant testified that the landlord changed the date of the inspection five times in one week.

The tenant testified that he wrote a letter to the landlord on 3 December 2015.

On 7 December 2015, the tenant returned home at approximately 1509. The tenant testified that he found the front door open. The tenant testified that he discovered broken glass in the kitchen and the back door was broken. The tenant testified that the floor was dirty and it appeared that the people had been walking indoors with shoes and had tracked dog feces on the carpet. The tenant testified that the pet rabbit was in the kitchen. The tenant testified that when the rabbit was released from his cage he darted and ran into a door.

The tenant testified that his daughter called the police. The tenant testified that the police attended at 1800 to 1900. At that time, the tenant discovered a note from the landlord saying that he had entered through the back door. The police telephoned the landlord. The landlord explained that he had used force to enter the rental unit and that he was not going to repair the door.

The tenant testified that he contacted an emergency locksmith who attended on or about midnight on 8 December 2015.

The tenant testified that the carpets were soiled from the back door into the living room hallway and into the bathroom. The tenant testified that it was necessary to have the carpets cleaned. The tenant testified that even after the carpets were cleaned there were still spots.

The tenant testified that he replaced a lock in January because the lock was broken.

Testimony of AC

AC is the tenant's daughter.

AC testified that the locks to the rental unit were never changed.

AC testified that when she came home the back door was hanging off its frame. AC testified that the home was left completely unsafe. AC testified that the responding officer agreed it was not a safe situation.

AC testified that the front door needs to be closed with considerable force to get it to fit. AC testified that the door was not closed and that the slightest force would cause it to open.

AC testified that there was broken glass in the rabbit's cage. AC testified that the rabbit's behaviour changed after the incident and that he was constantly spooked, would hide under the table and did not want contact with people. AC testified that when the rabbit bolted and ran into the door he fractured his skull. AC testified that the rabbit's jaw had to be rewired and shaved and he could not eat.

Testimony of the Landlord

The landlord testified that on 30 November 2015 he provided notice to the tenant to enter the rental unit on 3 December 2015. By mutual agreement, the parties rescheduled that entry to 7 December 2015.

The landlord testified that the tenant used the wrong address for his letter of 3 December 2015. The landlord testified that the landlords did not receive the letter until 8 December 2015.

The landlord testified that he attempted to open the door by using a tool to pry to door open, but it would not open in that manner. The landlord testified that he gained access to the rental unit by using a golf club to break the glass and unlocking the door. The landlord testified that he tried the door handle and it broke. The landlord admitted that he cracked the door in his attempt to pry it open. The landlord testified that he gained access in this manner because neither landlord had the key to the rental unit as the tenancy began more than 18 years ago. The landlord testified that he asked the tenant to provide a key and he refused to do so. The landlord testified that he swept up the broken glass. The landlord testified that he closed the curtain across the broken window. The landlord testified that he did not break the back door off its hinge.

The landlord testified that the back door had three locks on it.

The landlord testified that he left the rental unit at 1446. The landlord testified that he locked the front door when he left. The landlord testified that he did not arrange for anyone to fix the door. The landlord testified that it is the tenant's responsibility to pay for the repair because the tenant did provide the key.

The landlord stated that he does not understand how the events of 7 December caused the rabbit damage.

The landlord submitted that he acted reasonably and made an effort to do things properly. The landlord submitted that the tenant should have provided photographs of the dirty carpets. The tenant submits that if this allegation was true the tenant would have provided photographs. The landlord submitted that the tenant should have provided a police report. The landlord submits that the tenant is making things up.

Testimony of RK

RK is the landlord's coworker. RK testified that he was with the landlord for lunch on 30 November 2015 when they detoured to go to the rental unit to drop off a letter. RK testified that the landlord asked to enter the rental unit on Thursday of that week, but the tenant said he was working. RK testified that he heard the landlord and tenant agree to 7 December 2015, the following Monday.

Testimony of DP

DP is a contractor for the landlords. DP has conducted work on the next door property. DP testified that the landlord contacted him asked him to attend at the rental unit to review the property for the contemplated renovations and to provide an estimate on the scope of work.

DP testified that the landlord broke the window in the door to enter the rental unit because the tenant was not there to give access. DP testified that when the landlord attempted to kick the door in the doorjamb broke. DP testified that there were three locking mechanisms on the door (the handle lock, a deadbolt, and a chain). DP testified that the landlord had to enter. DP testified that he and the landlord spent approximately an hour at the rental unit and then cleaned up. DP testified that he saw the landlord clean the glass up.

DP testified that he left prior to the landlord. DP testified that he left through the front door.

DP denies that he or the landlord tracked in dog feces. DP testified that he took his shoes off. DP testified that the flooring was clean when he left.

Documents

The tenant provided photographs of the damage to the door. The back door is cracked near the handle. The door is split. The window is broken. The door frame is damaged.

The landlord provided a photograph of the door. The door is cracked near the handle. The glass is broken.

I was provided with an invoice from a locksmith dated 8 December 2015 in the amount of \$945.00 for the emergency call to replace the back door. I was provided with a receipt in the amount of \$35.97 dated 10 December 2015 for the cost of a new door frame. I was provided with a receipt in the amount of \$59.78 dated 10 December 2015 for the cost of repainting the door and frame.

I was provided with a receipt dated 21 January 2016 for the cost of replacing a lock. I was provided with a receipt for carpet cleaning. I was provided with veterinary invoices.

Analysis

The parties agree that the landlord entered the rental unit on 7 December 2015 by force. The landlord submits that this is lawful and reasonable. It is not.

It is the landlord's responsibility to keep a copy of a key to the rental unit.

Section 29 of the Act sets out the conditions under which the landlord may enter a rental unit. There is no obligation for the tenant to assist in the landlord entry, but a tenant may not interfere

with the landlord's right to enter. *Residential Tenancy Policy Guideline*, "7 Locks and Access" provides the following:

Where a valid notice has been given by the landlord it is not required that the tenant be present at the time of entry.

The tenant's obligation is not to change the locks in the course of the tenancy pursuant to section 31 of the Act. While the tenant did add an additional chain lock to the back door this is not why the landlord accessed the rental unit in the manner he chose. The method of entry was necessitated by the landlords' failure to retain a key.

The appropriate action by the landlords after failing to retain a key to the rental unit would have been to seek permission to rekey the door and provide copies of that new key pursuant to section 31 of the Act. It was certainly not appropriate to force entry into the rental unit and then leave the rental unit damaged and unsecure.

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

The landlord's actions of 7 December 2015 constitute a breach of subsection 32(1) of the Act. A broken external door preventing the proper security of the rental unit constitutes a breach of this provision. The fact that the landlord caused this damage makes it even more problematic.

Section 33 of the Act describes "emergency repairs" as those repairs that are (a) urgent, (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and (c) 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

Subsection 33(3) of the Act sets out that a tenant may make emergency repairs where emergency repairs are needed, the tenant has made at least two attempts by phone to contact the landlord, and the tenant gave the landlord a reasonable amount of time to make the repairs.

The landlord informed the police in attendance on 7 December 2015 that he would not fix the door. In doing so, the landlord was made aware of the problem and refused to fix it. The door could not be left in the condition it was as the rental unit was unsecure and unsafe. I find, pursuant to section 33 of the Act that the tenant was entitled to initiate these repairs. Pursuant

to subsection 33(5) of the Act, the tenant is entitled to be reimbursed for the amount of the repairs to the door:

Item	Amount
Repair for Door and Lock	\$945.00
Repair for Door Frame	59.78
Door Frame	35.97
Total Award for Emergency Repairs	\$1,040.75

The tenant claims for the cost of replacing a lock. The lock was replaced on 21 January 2016. The tenant did not make any demand for the landlord to replace the lock or show that the original lock was damaged. In particular, the delay in the repair militates against a finding that the replacement was an emergency repair. Further, this cost does not appear to be related to the entry of 7 December 2015. On the basis that this repair was not an emergency repair, I find that the tenant is not entitled to recover the cost of the lock repair.

The tenant testified that the landlord caused damage to the carpet in the rental unit. The landlord denies that he did. The landlord provided a witness DP who corroborates that the carpets were not left dirty. The tenant did not provide photographs of the damage or other corroborating evidence such as a statement from the carpet cleaner. On balance I prefer the landlord's version of events. The landlord was forthright in providing his evidence—he admitted facts that were highly adverse to his interests. The tenant appeared to exaggerate the extent of the damage. For this reason, I find that the tenant has not shown that the landlord breached the Act or tenancy agreement by soiling the carpets. The tenant is not entitled to recover the cost of the carpet cleaning.

The tenant claims the cost of his pet's veterinary bills. The pet's injuries were caused when he bolted and ran into a surface. The landlord submits that the rabbit was fine and was not injured in the forced entry. As I found above the landlord did enter the rental unit in a way that was not in accordance with the Act.

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 rabbit's injuries are not sufficiently related to the entry; rather, the pet bolted and hit his head. For this reason, I find that the entry is not sufficiently linked to the pet's injury so as to be causal. As the tenant has not shown that the entry caused the rabbit's injuries, he is not entitled to recover the veterinary costs.

Section 28 provides that 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 significantly interfered with the possession rights of the tenant by forcing entry into the home and leaving it unsecured. I find that this constitutes a breach of the tenant's right to quiet enjoyment. This is a more serious case of a breach as the breach was highly destructive and left the home unsecured; however, this situation was, to an extent, precipitated by the acrimonious relationship between the parties as can be seen over the five dispute resolution hearings. For these reasons, I value the loss of quiet enjoyment as one half month's rent.

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

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,478.25 under the following terms:

Item	Amount
Repair for Door and Lock	\$945.00
Loss of Quiet Enjoyment	387.50
Repair for Door Frame	59.78
Door Frame	35.97
Recover Filing Fee	50.00
Total Monetary Order	\$1,478.25

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 subsections 9.1(1) and 77(2) of the Act.

Dated: July 22, 2016

Residential Tenancy Branch

