



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, LRE, O

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;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to end a fixed term tenancy earlier than the date specified in the tenancy agreement pursuant to section 44.

The landlord did not attend this hearing, which lasted approximately 50 minutes. The tenant attended the hearing, aided by two advocates, and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call a witness.

The tenant testified that he served his application for dispute resolution dated February 6, 2017 on the landlord by registered mail on February 9, 2017. The tenant provided a Canada Post tracking number as evidence of service. I find that the landlord was deemed served with the tenant's application for dispute resolution and evidentiary materials pursuant to sections 88, 89 and 90 on February 14, 2017, five days after mailing.

At the outset of the hearing, the tenant made an application requesting to amend the monetary amount of the claim sought. The tenant testified that since the application was filed the landlord has continued to act in a manner that has impeded his ability to enjoy the rental unit and the monetary claim should reflect the ongoing issues. Rule 4.2 of the Rules of Procedure allows that an application may be amended at a hearing when the amendment can be reasonably anticipated. As the tenant is making a claim for snow removal, I find that the landlord could reasonably anticipate that the additional

snowfall would lead to an increase in the amount sought. Similarly, I find that the landlord could reasonably anticipate that the amount the tenant is seeking for damages and loss arising out of the tenant's complaints about the tenancy would increase through the course of the tenancy. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the tenant's Application to increase the tenant's monetary claim from \$1,717.82 to \$5,000.00.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for damages or loss?

Should conditions be set on the landlord's right to enter the rental unit?

Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement?

Should the tenant be allowed to end the fixed term tenancy earlier than the date specified in the tenancy agreement?

Background and Evidence

The tenant provided undisputed evidence regarding the following facts. This fixed term tenancy began on May 28, 2016 and is scheduled to end on June 1, 2017. The monthly rent is \$1,000.00 payable on the first of each month. The tenant paid a security deposit of \$500.00 at the start of the tenancy and it is still held by the landlord. The rental unit is a basement suite in a detached home. The tenant resides in the rental unit with the landlord and her family occupying the main floor of the home.

There have been a series of conflicts between the tenant and the landlord and there was an earlier hearing where another arbitrator issued an order regarding some of the matters in dispute. For ease of reference, the file number of the previous hearing is on the cover page of this decision.

The tenant described the tenancy as a constant series of harassment, intimidation and invasion by the landlord. The tenant testified that the landlord has entered the rental unit without permission, has intimidated the tenant's guests, placed unreasonable restrictions on the tenant's right to invite guests, and has harassed the tenant by texting the tenant at all hours of the night.

The witness was an overnight guest of the tenant who testified that the landlord approached him demanding personal information in an accusatory manner. He testified that he felt uncomfortable with the landlord's questions and constant monitoring. He

also testified that he observed the tenant's anxiety and stress and believes that it was caused by the landlord's behaviour.

The tenant testified that the landlord and her family have prevented him from using the common driveway of the property by parking their vehicles in an obstructive manner. The tenant said that he is consequently forced to park his own vehicle on the street and that increases his insurance payments.

The tenant testified that the landlord failed to clear the common driveway and footpath of snow and ice. The tenant said that he chose to shovel the snow and ice himself and purchased rock salt for the job. The tenant testified that over the winter he has spent a total of 16 hours removing snow and ice. The tenant said that the landlord informed him that it was the tenant's responsibility to clear the common driveway. The landlord provided him with a copy of the tenancy agreement where the landlord had added this requirement. The tenant testified that this requirement was not in the original tenancy agreement and the landlord hand wrote this additional clause without his knowledge or consent.

The tenant testified that the tenancy has caused him considerable stress and it has impacted his quality of life. The tenant testified that the landlord's behaviour has negatively affected his performance in school. The tenant said that he intends to attend school in another province from May of 2017. He said that he wishes to cancel the fixed term tenancy and move out of the rental unit to pursue his studies.

Analysis

An order setting conditions on the landlord's right to enter the rental unit

The tenant has requested that conditions be set on the landlord's right to enter the rental unit. The tenant testified that the tenancy has been marked by continuous harassment by the landlords. I find that this portion of the application was the subject of a previous hearing where a conclusive order was made. I find that there is insufficient evidence of new incidents or incursions occurring after the date of the previous hearing to consider this a separate request rather than an attempt to reargue the case that was before the previous arbitrator. Accordingly, I find that I have no jurisdiction to consider a matter that has already been the subject of a final and binding decision by another arbitrator appointed under the Act. The orders made in the earlier decision requiring the Landlord to comply with the Act still stand.

An order requiring the landlord to comply with the Act, regulation or tenancy agreement

The tenant's application does not clearly articulate which aspects of the *Act*, regulation and/or tenancy agreement he wishes the landlord to comply with. Furthermore, I find that a similar application was made at the previous hearing. I am only considering the portions of this request that were not the subject of an earlier binding decision.

The tenant testified that the landlord and her family have blocked his use of the common driveway and footpath by parking their vehicles in an obstructive manner. The tenant said that the landlord and her family regularly harassed his guests: accosting them outside of the rental unit and intrusively demanding they identify themselves and their occupation. The tenant gave evidence that the landlord failed to clear the common driveway and footpath of snow and ice in a timely manner.

As the tenant did not submit a copy of the tenancy agreement into evidence, I am unable to make a finding on whether the landlord has complied with the agreement.

The tenant is entitled to use of common areas for reasonable purposes pursuant to section 28 of the *Act*. The tenant gave evidence that he accesses the rental unit via the driveway and footpath. I find that those areas are common areas of this tenancy and the landlord must not unreasonably block the tenant's access with parked vehicles.

The landlord must not unreasonably restrict access to the residential property by the tenant or a person permitted onto the property by the tenant pursuant to section 30 of the *Act*. I find that the landlord has interfered with the tenant's rights in contravention of the *Act*.

Therefore, I order the landlord to comply with the *Act*, regulation and the tenancy agreement as follows:

- The landlord must comply with the provisions of the *Act* regarding access to the common areas of rental property and move her vehicle or any obstruction on the common driveway and footpath to allow the tenant reasonable access.
- The landlord must comply with the provisions of the *Act* regarding access to the rental unit and refrain from interfering or harassing the tenant or the tenant's guests.
- The landlord must remove the snow and ice on the common driveway and footpath in a timely manner.

Monetary Claim for Damages and Loss

The tenant has requested a monetary award in the amount of \$5,000.00 comprised of the following items.

Item Claimed	Amount
Key Cutting	\$7.82
Snow and Ice Removal (16hours @ \$25.00)	\$400.00
Salt for Walkway	\$10.00
Reduction of Rent (6 months x \$500.00)	\$3,000.00
General Damages for Loss of Quiet Enjoyment	\$1,582.18
TOTAL	\$5,000.00

I shall deal with each of these claims in turn.

Key Cutting

The tenant testified that the landlord requested that replacement keys be supplied as she believed the locks to the rental unit had been changed. The tenant testified that the locks were not changed and the landlord's existing keys worked on the rental unit locks but he had new keys cut to comply with the landlord's demands. The tenant provided a copy of a receipt for the key cutting and copies of text messages with the landlord when the landlord requested the keys. I find that the tenant is entitled to compensation from the landlord in the amount of \$7.82 for key cutting.

Snow and Ice Removal & Salt for Walkway

The tenant testified that he spent a total of 16 hours throughout the winter removed snow and ice from the common driveway and footpaths of the rental property. The tenant said that the landlord failed to remove the snow and ice and so he chose to perform the work. The tenant said there was no prior agreement with the landlord that he would perform this work and be compensated for his labour. The tenant said that during the days of snowfall he would spend a half hour to an hour each day to clear the snow and ice. The tenant also said he purchased rock salt for de-icing. He estimates that the cost of the rock salt was \$10.00.

While I find that the landlord has an obligation to maintain the common areas of the rental property pursuant to section 32 of the *Act*, I find that the tenant does not have the right to unilaterally perform maintenance and charge the landlord for his costs. Section 33 of the *Act* provides that a tenant may recover the costs of emergency repairs under

narrow circumstances. I find that the snow removal does not fall under the definition of an emergency repair under the Act. Even if the snow removal was an emergency repair the tenant failed to contact or attempt to contact the landlord and give the landlord reasonable time to perform the snow removal. Accordingly, I dismiss this portion of the tenant's application.

Reduction of Rent and Loss of Quiet Enjoyment

The tenant has requested monetary compensation for both a reduction in the value of the rent and loss of quiet enjoyment. As both claims arise from the same evidentiary basis I will deal with the matters together. The tenant requested compensation for loss of quiet enjoyment in the previous hearing where a final and binding decision was made. I will only consider losses that arose from the date of the previous hearing, October 18, 2016 to the present hearing, March 6, 2017

Section 67 of the *Act* allows me to issue a monetary award for damage or loss. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

Similarly, section 28 of the *Act* provides that a tenant is entitled to quiet enjoyment including the right to reasonable privacy and freedom from unreasonable disturbance. Residential Tenancy Policy Guideline 6 further discusses the right to quiet enjoyment and provides that:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

The tenant testified that since the date of the previous hearing the landlord and her family have continued to act in an aggressive, unpleasant manner, harassing the tenant and his guests, rooting through the tenant's garbage, and peering into the rental unit through the windows. The tenant said that he has requested the landlord limit communication to email but has continued to receive text messages and phone calls from the landlord at all hours. The tenant specifically cited an instance where the

landlord and her son attended at the rental unit on February 4, 2017 knocking incessantly on the rental unit door. The tenant said that the constant interference has caused him considerable stress and his health has suffered as a result.

The tenant testified that the landlord has prevented him from using the driveway to park his vehicle. He said that he is forced to park his vehicle on the street and is unable to use the driveway as he is entitled to under the tenancy agreement. The tenant testified that parking on the street causes an increase in his insurance costs but he did not submit any figures as to the difference in cost.

I accept the tenant's undisputed evidence that the landlord's behaviour and interference has been an ongoing and regular aspect of this tenancy. I find that the tenant's right to quiet enjoyment of the rental unit has been interfered with by the landlord's intrusive monitoring of the tenant and his guests.

I do not find that the landlord's behaviour has resulted in a loss in the value of the tenancy for the tenant. The tenant has continued to be able to reside in the rental unit, and use its facilities. The tenant testified that he should be allowed to use the driveway to park his vehicle but did not provide a copy of the tenancy agreement or any written evidence to show that parking is a feature included in the tenancy. While the tenant has testified that he is constantly agitated even inside the rental unit I find that the landlord's actions have not affected the value of the tenancy.

While I find that the tenant suffered loss of quiet enjoyment as a result of the landlord's actions I am not satisfied that the tenant has provided sufficient evidence to justify the entire amount requested. Under the circumstances, I am issuing a monetary award in the amount of \$500.00, which reflects that the tenant did suffer a loss of quiet enjoyment in the tenancy.

Early End of a Fixed Term Tenancy

This is a fixed term tenancy scheduled to end on June 1, 2017. The tenant testified that he will be moving out of the province for schooling and intends to vacate the rental unit on or before May 1, 2017. The tenant has requested that the tenancy be ordered to end on that date.

I find the relationship between the landlord and tenant has deteriorated to the point that justifies ending the tenancy earlier than the fixed term. Therefore I order that pursuant to section 44(1)(f) of the *Act* this tenancy will end on May 1, 2017.

Conclusion

This tenancy will end on 1:00pm May 1, 2017, by which time the tenant and any other occupants of the rental unit under this tenancy agreement will have vacated the rental unit.

I issue a one-time monetary Order in the amount of \$507.82. As this tenancy is continuing, I allow the tenant to recover this \$507.82 award by reducing the monthly rent by that amount on the next monthly rental payment to the landlord. In the event that this is not feasible, I issue a monetary Order in the tenant's favour in the amount of \$507.82.

I order the landlord to comply with the Act, regulation and the tenancy agreement as follows:

- The landlord must comply with the provisions of the Act regarding access to the common areas of rental property and move her vehicle or any obstruction on the common driveway and footpath to allow the tenant reasonable access.
- The landlord must comply with the provisions of the Act regarding access to the rental unit and refrain from interfering or harassing the tenant or the tenant's guests.
- The landlord must remove the snow and ice on the common driveway and footpath in a timely manner.

I dismiss the remainder of the tenant's application.

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: March 15, 2017

Residential Tenancy Branch