



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT CNC FF LAT LRE MNDC OLC

Introduction

This hearing addressed the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- recovery of the filing fee from the landlord pursuant to section 72 of the *Act*;
- an Order restricting the landlord's right to enter the rental unit, to allow access to the unit for the tenant or the tenants' guests and to change the locks to the rental unit pursuant to section 70 of the *Act*;
- a Monetary Order as compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*;
- a reduction in rent for repairs, services or facilities agreed upon but not provided pursuant to section 65 of the *Act*;
- cancellation of a Notice to End Tenancy for Cause pursuant to section 47 of the *Act*; and
- an Order for the landlord to comply with the *Act* pursuant to section 62 of the *Act*;

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 tenants were represented at the hearing by D.Q. (the "tenant").

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"). In accordance with sections 88 and 89 of the *Act*, I find that landlord was duly served with the Application and evidentiary package.

At the outset of the hearing, the tenant explained that both tenants had vacated the rental unit on April 1, 2017 and would therefore only be pursuing the Monetary Order and the return of the filing fee. As per the tenant's request, all portions of the tenants' application other than the pursuit of the Monetary Order and the return of the filing fee are withdrawn.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order?

Are the tenants entitled to a return of the filing fee?

Background and Evidence

Both the tenant and the landlord testified that this tenancy began on February 15, 2017 and ended on April 1, 2017. Rent was \$1,700.00 per month and deposits of \$875.00 (security) and \$437.50 (pet) continue to be held by the landlord.

The tenant explained that due to unmanageable living conditions, he and roommate B.F. vacated the rental unit on April 1, 2017. The tenants are seeking a Monetary Order of \$4,500.00 in reflection of the associated stress that was put on them by the landlord, their loss of enjoyment of the rental property, and the inconvenience of what the tenant deemed "pain and suffering" of facing the distraction of arguing with his landlord while he attempted to run a business from home. In the tenants' written submissions, the tenant alleged that the landlord illegally cut off his access to the internet, something the tenant stated was part of the tenants' tenancy agreement.

The tenant indicated that he was subject to harassment from the landlord on March 4, 2017 when the landlord illegally entered the rental suite. Furthermore, the tenant explained that the landlord had banged on his door numerous times and had subjected the tenants to numerous threatening notices. As part of their evidentiary package, the tenants provided a DVD of the landlord and an unidentified tenant arguing, eviction notices they received and written submissions detailing the tenants' loss of quiet enjoyment.

Under sworn testimony the landlord denied ever entering the suite. He explained that during the incident in question on March 4, 2017 he knocked on the door three times and never entered the suite. The landlord stated that he had provided the tenants with a 24 hour notice that he would be entering the unit and it was for this reason that he was knocking on the door. Furthermore, the landlord noted that it was 2:30 P.M., a time that he determined to be reasonable. The tenants provided an affidavit as part of their evidentiary package from witness R.M. that maintained the landlord was in fact in the suite.

The landlord continued by noting that other than the March 4, 2017 incident, an argument had taken place between himself and the tenants concerning objects in the

front, side and back yard, and on one other occasion when he suspected the tenants to have been smoking in the rental unit.

Analysis – Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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. In this case, the onus is on the tenants to prove their entitlement to their claim for a monetary award.

Based on the evidence and testimony presented at the hearing by both parties, I have no doubt that this was a contentious relationship that culminated in an incident on March 4, 2017. It is evident that all parties involved took steps to antagonise one another. The tenants are seeking a Monetary Order for \$4,500.00 based on loss of enjoyment of the rental unit and for the stress and inconvenience that D.Q. and his business have suffered as a result of these interactions.

Residential Tenancy Policy Guideline #6 describes the elements that must be present for an arbitrator to find that a breach of quiet enjoyment has occurred. It notes, “a landlord is obligated to ensure that the tenant’s entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.”

The tenants provided the hearing and the landlord with a very detailed and well organized evidence package. Despite this, little evidence was presented at the hearing of how the tenant arrived at the \$4,500.00 figure for loss. In their written submissions, the tenants described incidents that occurred on March 1, 4, 5 and 11, 2017. Based on the written submissions, text messages and testimony of the tenant I find that it would be difficult to place blame on either party.

The major incident in question on March 4, 2017 appears to be a perfect storm of the tenant wishing to sleep in until the afternoon and the landlord attempting to speak with

him at an hour that he determined to be reasonable. I am not satisfied that the incident in question warrants any monetary award.

I do not find that the landlord engaged in behaviour that could be classified as a substantial interference. The tenants have failed to demonstrate how the landlord is solely responsible for loss they have suffered and have not provided the hearing with evidence that can verify the actual monetary amount of the loss or damage. The only concrete matter that was submitted to the hearing concerned loss of wireless internet; however, upon an examination of the residential tenancy agreement submitted as part of their evidentiary package, this does not appear to be included with the rent.

The tenants' application for a Monetary Order is therefore dismissed.

Conclusion

The tenants' application for a Monetary Order is dismissed.

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 6, 2017

Residential Tenancy Branch