



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC DRI ERP RP RPP LRE AAT LAT MNDC

Introduction

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

- a monetary order for compensation for loss or money owed 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;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- 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
- an order to allow the tenant to change the locks to the rental unit pursuant to section 70.

While the tenant and her advocate IC attended the hearing by way of conference call, the landlord did not. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant provided sworn, undisputed testimony that she had served the landlord with her application for dispute resolution hearing package ("Application") and evidence by way of registered mail on June 5, 2017. The tenant provided a tracking number during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the Application and evidence on June 10, 2017, five days after mailing.

Preliminary Issue—Amendment to Tenant’s Application and Additional Evidence Submitted after the Hearing

Rule 4.6 states the following:

***As soon as possible**, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.*

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the by the respondent(s) not less than 14 days before the hearing.

I note that an amendment and supporting evidence from the tenant for this application was sent to the RTB by fax, and was not received until after the scheduled hearing. As this amendment and evidence were received after the hearing was held, and the respondent has the right to review and respond to the amendment and supporting evidence, the package will be excluded and not considered as part of this application.

Issue(s) to be Decided

Is the tenant entitled to a monetary compensation for money owed under the Act, regulation, or tenancy agreement?

Is the tenant entitled to a determination regarding their dispute of an additional rent increase by the landlord?

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Is the tenant entitled to an order requiring the landlord to return the tenant’s personal property?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled an order to allow access to or from the rental unit or site for the tenant or the tenant's guests?

Is the tenant entitled to an order to allow the tenant to change the locks to the rental unit?

Background and Evidence

The tenant provided the following sworn, undisputed testimony as the landlord did not attend the hearing. This month-to-month tenancy began on May 8, 2016 with monthly rent set at \$625.00. The landlord had collected a security deposit of \$330.00 from the tenant, and still continues to hold that deposit. The tenant gave undisputed sworn testimony that the rent was originally set at \$617.00, but in September 2016 rent was increased to \$625.00 by way of a text message from the landlord.

The tenant, in this application, is applying for a monetary order in the amount of \$1,250.00, equivalent to two month's rent, as well as the restoration of this tenancy, which ended abruptly on May 31, 2017 when the locks were changed by the landlord.

The tenant was provided a copy a one page tenancy agreement dated May 6, 2016 upon move-in. The tenancy agreement was included in the tenant's evidence, which reads "I understand that while residing at...I will abide by all the terms and conditions set out in the *** Lease Agreement, Addendum and Residential Tenancy Act. Further I understand that any agreement I have with the *** Society does not supersede the agreement with *** but both are valid". The document makes no reference to the term of the tenancy, or the monthly rent owing. The tenant testified that no other documents were given to her for this tenancy despite her requests.

The tenant testified that she had never received any notices nor communication notifying her that the landlord wished to end this tenancy, nor did she consent to it. The tenant testified that her belongings were removed, and not returned to her, and she was rendered homeless by the landlord.

The tenant's witness, DD, confirmed that her friend was now homeless, and as the locks were changed without notice, the tenant did not have access to her pet fish, her ID, clothes, or money.

The tenant's witness, SD, testified that he returned at a later date to assist the tenant with retrieving the tenant's belongings, and was given less than half an hour access in the dark to do so, as the landlord had by then terminated the electricity to the unit. SD was only able to retrieve the tenant's fish and some items of clothing. Access was only provided after the police had contacted the building manager to provide access. SD testified that the building manager provided no explanation other than that the tenant was evicted.

The tenant is currently residing in Ontario after being homeless for the month of June 2017. The tenant is currently paying \$675.00 monthly rent, although it took her three weeks to find new housing. The tenant testified that it cost her \$680.00 to relocate to another province in order to find new housing.

Analysis

While I have turned my mind to the testimony of the tenant and her witnesses, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

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 or 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 tenant to prove, on a balance of probabilities, that the landlord caused her a loss of her personal property and the amount of such loss.

The tenant seeks a monetary order for the losses that she incurred as a result of the landlord's actions. The tenant seeks \$1,250.00 in total for these losses.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded 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.

I accept the tenant's undisputed evidence that she had lost her personal belongings and had to find new housing after being locked out of the rental unit by the landlord. I find that the landlord breached section 31 of the *Act*, which prohibits the landlord from changing the locks without providing a new set of keys to the tenant. I find that the landlord also breached section 44(1) of the *Act*, which states that proper notice must be given to the tenant in ending this tenancy unless both parties mutually agree to end this tenancy, or unless the tenant vacates or abandons the rental unit. I find that the tenant made reasonable efforts to contact the landlord to retrieve her items but that she was denied adequate access to her items.

The undisputed testimony of the tenant was that she was never given any notices to end this tenancy from the landlord. The landlord was not permitted to change the locks and deny the tenant access to her personal property. I accept the tenant's evidence that she was rendered homeless, and without her personal belongings. The landlord did allow access at a later time, but it was brief and the conditions did not allow her to retrieve all her personal belongings such as her clothing.

I have considered the testimony and submissions of the tenant and her witnesses, and I find that the tenant had provided testimony and evidence to support that the landlord failed to fulfill their obligations as required by sections 31 and 44(1) of the *Act* as stated above. From the testimony provided in this hearing, I find that the tenant faced extreme distress as a result of the landlord's actions. Accordingly I find the tenant is entitled to a monetary award for the losses incurred due to the landlord's failure to abide by sections 31 and 44(1) of the *Act*.

While I have considered the tenant's full claim of two month's rent, I note that the tenant did not provide any receipts to support value of the monetary loss claimed by the tenant. As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages.

Based on this principle, I award the tenant nominal damages of \$300.00 for the losses she incurred as a result of the landlord's contravention of the Act in ending this tenancy.

The tenant made an application disputing the rent increase that was applied since September 2016 for this tenancy. Section 42 of the *Act* stipulates that a notice of rent increase must be provided 3 months in advance of the increase and be in the approved form, available on the RTB website; a text message does not comply with this requirement. As such, I find the text message sent to the tenant notifying her that her rent was increased from \$617.00 to \$625.00 is not compliant with Section 42. On this basis, I find that the tenant is entitled to compensation in the amount of \$72.00 (\$8.00 @9 months = \$72.00) for the imposed rent increase for September 2016 through to May 2017.

As the tenant did not apply for an Order of Possession of the rental unit, I am not able to make an order in regards to her possession of the rental unit. As this tenancy had ended on May 31, 2017, and the tenant is no longer in possession of the suite, I dismiss the tenant's application for an order to allow her access to the suite, change the locks, or for the landlord to make repairs to the suite. I also dismiss the tenant's application for an order to suspend or set conditions on the landlord's right to enter the suite.

The tenant did not submit an itemized list of the personal property that the landlord is in possession of. I am unable to determine what if any items the landlord still has, and on this basis I dismiss the tenant's application for the return of her personal property.

I note that the landlord still holds the tenant's security deposit for this tenancy. As this tenancy ended on May 31, 2017, and the landlord did not apply for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit, I find that that the tenant is entitled to the return of her \$330.00 deposit.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$694.00 against the landlord as set out in the table below for the failure of the landlord to comply with sections 31 and 44(1) of the *Act*.

Item	Amount
Return of the Security Deposit retained by the landlord	\$330.00
Monetary Award for Landlord's Failure to Comply with s.31 and 44(1) of the <i>Act</i>	300.00
Overpayment of Rent due to Illegal Rent Increase (9 months @ \$8.00)	72.00
Total Monetary Order	\$702.00

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

The remainder of the tenant's application is dismissed without leave to reapply.

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: August 23, 2017

Residential Tenancy Branch