



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for July 13, 2017, but adjourned by consent of all parties due to lack of time to complete the hearing, and to address the landlord's request for a summons compelling a material witness, as well as a summons to produce documentation for this hearing.

The adjournment decision dated October 16, 2017 noted the requirements for service of the hearing package and evidence. The landlord acknowledged receipt of all hearing documents, and was ready to proceed with this matter. The tenant also acknowledged receipt of the landlord's evidence for this hearing, and was ready to proceed.

Both parties consented to the admission of late evidence (approximately 11 pages) for the purpose of this hearing. This evidence was submitted by both parties for this hearing, containing the documentation obtained by way of the summons that was granted as part of the interim decision dated October 16, 2017.

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 other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 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 landlord's legal counsel, MD, appeared and spoke on behalf of the landlord, and had full authority to do so.

Issues

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

Is the tenant entitled to recover the cost of the filing fee from the landlord for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on February 1, 2015, and ended on March 31, 2016. Monthly rent was set at \$575.00, reduced from \$650.00 for repairs completed by the tenant. The tenant paid a \$300.00 security deposit at the beginning of this tenancy, which was returned to the tenant.

The tenant is making a monetary claim for \$24,643.78, for loss of quiet enjoyment, mental and physical damage, and associated costs of the end of this tenancy, as detailed in the table below:

Item	Amount
Postage for Housing Application	\$9.93
Packing Supplies	23.79
Self defence Class-Jan 2016	100.00
Self defence Class-Feb 2016	100.00
Damage Deposit for temporary rental	350.00
Address Change (post office)	55.60
Packing Tape	2.24
Moving Costs to Temporary rental	551.25
Half of Rent for temporary rental	350.00
Half of Hydro for temporary rental	40.04
Moving Costs to new home	830.00
Damage Deposit for New Home	275.00
Half of Rent for New Home	275.00
Storage Locker Rental	93.45
Rent Reduction for Sept 2015-February 2016 (\$383.33 x 6 months)	2,299.98
Rent reduction for March 2016	287.50
Loss of quiet enjoyment/Physical/Mental Damage	19,000.00
Total Monetary Order Requested	\$24,643.78

This tenancy ended in March of 2016 following a series of events that involved the tenant applicant and another tenant who lived in the same building. It is undisputed by both parties that the harassment that the applicant suffered was criminal in nature, and resulted in criminal charges against the other tenant.

The tenant's application pertains to the landlord's failure to take proper action to deal with the problematic tenant, which the tenant applicant testified caused her much fear during this tenancy, and afterwards. The tenant testified that she was unable to use any common areas due to the behaviour of the harassing tenant. The tenant testified that the landlord failed in his obligations to protect her right to quiet enjoyment, and she still suffers from anxiety due to the actions of the other tenant. The tenant applicant testified in the hearing that if the landlord had acted in a more timely manner the matter would not have escalated to the point where criminal charges would have been necessary. The tenant testified that the landlord did not issue any warning letters, nor did he address the issue when requested to do so by the tenant.

The tenant testified that the first incident took place in August 2015, after which she notified the landlord of the harassing behaviour. The tenant testified that the harassment continued, but the landlord and police failed to take action. In October 23, 2015 the tenant communicated to police officers, attending the building for an unrelated matter, of her situation. The tenant was told to document the harassment with video evidence. The evidence led to the other tenant's eventual arrest and charges for criminal harassment and uttering threats to cause bodily harm.

The tenant communicated to the landlord her concerns about the harassing tenant, and submitted in her evidence this correspondence including an email dated November 1, 2015 asking for help from the landlord. The landlord served the harassing tenant with a 1 Month Notice to End Tenancy for Cause ('1 Month Notice') in January 2016, with an effective date of February 28, 2016, and both tenants moved out shortly thereafter in March of 2016.

The landlord's position is that he took reasonable steps to address the situation, including consulting with the harassing tenant's outreach worker, and ending the tenancy with by issuing a 1 Month Notice, and fulfilled his duties as a landlord in accordance with the *Act*. The landlord testified that the two tenants once had an amicable relationship which ended shortly after the tenant applicant lent the harassing tenant money. The tenant applicant confirmed this in the hearing.

The landlord testified that he received conflicting messages from the tenant applicant about whether to issue a notice to end tenancy to the harassing tenant. The landlord testified in the email correspondence the tenant indicated that "I also did not consider all the notes intimidating or threatening so let it go". The tenant confirmed in the hearing when cross-examined by the landlord's counsel that she did not forward the landlord the video clips that were given to the

police, and that the landlord was not aware about the video clips until after the tenancy had ended with the harassing tenant.

When cross examined about her monetary claim for recovery of her security deposits the tenant confirmed that she had not given her forwarding address to the landlord, and as a result was not returned her security deposits. The tenant also testified that she was claiming recovery of the rent for her new rental as the landlord refused to provide a reference, and as a result had difficulty obtaining housing.

When cross-examined, the tenant confirmed that she had multiple disputes with other tenants when residing at a fourplex in July of 2014. The landlord's testimony is that he did speak to the harassing tenant in October 2015 after receiving a complaint from the tenant applicant about the excessive noise. The landlord testified that the harassing tenant denied everything and presented a different version of events, stating that it was the tenant applicant who was harassing her.

The landlord's position is that although the tenant did suffer anxiety and loss of quiet enjoyment due to the actions of his other tenant, the tenant applicant is not entitled to monetary compensation as the tenant failed to establish how the landlord failed in his obligations, and failed to establish why the tenant is entitled to \$24,643.78 in compensation, a figure which the landlord testified was not supported by the tenant.

KW testified as a witness in this hearing, who worked with the harassing tenant from February 2015 to November 2016 as a "homeless prevention program outreach worker". KW testified that her client appeared to be clean, friendly, and nice, and did not exhibit any signs of her propensity for violent and harassing behaviour. KW testified that her client simply appeared "down on her luck". KW testified that the landlord had contacted her in November of 2015, expressing concern about her client's behaviour towards another tenant. KW testified that she attempted to address the situation by attending her client's home on three occasions, only being successful the third time. KW testified that her client seemed happy, and denied all the issues that were raised by the landlord, stating that it was the tenant applicant who exhibited strange behaviour towards her. KW testified that this discussion was the extent of her dealings with the matter as her client denied all allegations, and she did not do any further investigation as her obligation was to her client, and not anyone else.

KW could not recall the details of any follow-up conversations or recommendations she made to the landlord. KW testified that she had about 75 to 100 clients during this period of time, and her perception was that the situation did not require further attention.

The tenant's witness, FL, testified in the hearing as she lived in the house next door, and was contacted by the tenant applicant in September 2015 about the harassing tenant. FL was present when the tenant telephoned the landlord, but does not recall the landlord's response. FL testified that she was present on at least four occasions, and on a few occasions the tenant

simply got the landlord's voicemail. FL testified that the tenant's interaction with the landlord was limited, and she herself has never met the landlord in the 8 years she has lived in the neighbouring house.

The landlord submitted that he had responded to the tenant's concerns by offering to issue a Notice to End Tenancy, but the tenant had refused stating that she did not want to make the situation worse. It was undisputed that the landlord had served the tenant with the 1 Month Notice, which was personally served to the tenant on January 27, 2017, effective February 28, 2017.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual

monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

(b) freedom from unreasonable disturbance;...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I have considered the testimony of both parties, and while the tenant had provided undisputed testimony to support that she was criminally harassed by the other tenant in the building, the tenant did not provide sufficient evidence to establish that the landlord failed to fulfill his obligations as required by section 28 of the *Act* as stated above. The landlord provided undisputed written and oral testimony to support that the tenant was involved in previous disputes with other tenants, and the landlord provided undisputed testimony that he had made attempts to address the situation by contacting the harassing tenant's outreach worker, who in turn investigated the matter. The outreach worker testified as a witness in this hearing, who investigated the complaint of harassment, which the harassing tenant denied and therefore saw no need to take further action.

It was undisputed that the landlord had attempted to address the issue in November of 2015, after receiving a written complaint by the tenant applicant, by contacting the harassing tenant's outreach worker. It was also undisputed that the police had requested further evidence from the tenant applicant before the tenant was charged in 2016, and that the landlord was unaware of this video evidence until after the tenancy had ended. It was also undisputed that the landlord had issued a 1 Month Notice to End Tenancy in January of 2016, ending the tenancy as soon as possible under section 47(1) of the *Act*.

Although I find that the tenant was criminally harassed by this other tenant, I find there is insufficient evidence for me to make a finding that the landlord had failed to meet their obligations regarding this matter. I find that the landlord had complied with the *Act*, and addressed the tenant's concerns in a timely manner by investigating the matter and ultimately ending the tenancy with the tenant. On this basis, I am dismissing the tenant's monetary claim for the loss of quiet enjoyment as a result of the landlord's failure to comply with the *Act*, as the tenant did not provide sufficient evidence that this loss of quiet enjoyment was the result of the landlord's actions. The tenant's application for a reduction in past rent and for her self defence classes are also dismissed as the tenant failed to establish how the landlord failed to comply with the *Act*, and how this failure contributed to these losses.

The tenant testified in the hearing that the landlord refused to be her reference in her housing application. The tenant also testified in the hearing that she was applying to recover the security deposit that was not returned to her due to her failure to provide the landlord with her forwarding address. I find that the tenant has not met the burden of proof to support how the landlord failed to comply with the *Act*, regulation, or tenancy agreement, and how such failure contributed to the monetary losses in her claim. On this basis the tenant's application to recover the costs she incurred during and after this tenancy are dismissed.

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. However, unlike punitive damages, the conduct of the wrongdoer need not contain an element of wilfulness or recklessness in order for an award of aggravated damages to be made. All that is necessary is that the wrongdoer's conduct was highhanded. The damage must also be reasonably foreseeable that the breach or negligence would cause the distress claimed.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought. The damage award is for aggravation of the injury by the wrongdoer's highhanded conduct.

The tenant requested \$19,000 for "damage to a person, both physical and mental" as part of her monetary claim. Although I sympathize with the tenant and the fact that she suffered greatly during and after this tenancy, I find that she did not establish how this estimate was obtained, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the damages the tenant is seeking in this application. Furthermore I find that the tenant failed to establish how her suffering was due to the deliberate or negligent act or omission of the landlord. On this basis I dismiss the tenant's monetary claim for aggravated damages.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was not successful in her application, the tenant must bear the cost of this filing fee.

Conclusion

I dismiss the tenant's entire 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: November 28, 2017

Residential Tenancy Branch