



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC LRE OLC RP RR FFT

Introduction

This hearing dealt with the tenant's application pursuant to the Residential Tenancy Act ("the Act") for: cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 46; an order requiring the landlord to comply with the Act pursuant to section 62; an order that the landlord make repairs to the rental unit pursuant to section 33; an order to allow the tenant(s) to reduce rent for repairs agreed upon but not provided, pursuant to section 65; an order to set conditions on the landlord's right to enter the unit pursuant to section 70; and authorization to recover the filing fee for this application to section 72.

At the outset of this hearing, the tenant testified that he had vacated the rental unit (on April 8, 2018). As a result, the tenant withdrew his application to cancel the landlord's 1 Month Notice, the application to set conditions on the landlord's entry to the rental unit as well as the application that the landlord comply with the Act and make repairs to the rental unit. The tenant proceeded with his application for a monetary order (by way of a rent reduction) as a result of the landlord's failure to make repairs during the tenancy.

The landlord/respondent did not attend this hearing, although I left the teleconference hearing connection open until 9:54 a.m. in order to enable the landlord to call into this teleconference hearing scheduled 9:30 a.m. The tenant/applicant attended the hearing and was given a full opportunity to be heard, to testify and to make submissions on his application. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who called into this teleconference.

The tenant testified that he sent the landlord his Application for Dispute Resolution package with Notice of this hearing on March 15, 2018 by registered mail. The tenant provided the tracking information and a copy of the Canada Post receipt for this mailing.

Based on the undisputed evidence of the landlord, I find that the landlord was deemed served with the tenant's Application for Dispute Resolution on March 20, 2018 in accordance with section 89 and 90 of the Act (5 days after its registered mailing).

Issue(s) to be Decided

Is the tenant entitled to an order to allow the tenant(s) to reduce rent for repairs?
Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on January 1, 2018 with a monthly rental amount of \$850.00 was payable on the first of each month. The tenant testified that the landlord continues to hold a \$425.00 security deposit paid by the tenant at the outset of this tenancy. The tenant sought \$1250.00: a rent reduction for the landlord's failure to make repairs during the tenancy.

The tenant vacated the rental unit on April 8, 2018. He testified that he paid rent in March 2018 but that he did not pay any rent to the landlord in April 2018. He argued that he is entitled to recover a further one months' rent because of the inconvenience and irritation that he suffered as a result of the landlord's actions (or inaction) during the course of the tenancy.

The tenant testified that there was a leak in his kitchen and that it took the landlord 6 days to repair the leak. He sought compensation for the landlord's failure to repair the leak in a reasonable amount of time. He testified that, during his tenancy, the landlord had a contractor remove the stove, hood fan and sink in his kitchen. He testified that he suffered inconvenience as a result of the contractor in his rental unit as the tenant works from home, had to get the place ready for the contractor and be out of the unit when the contractors were working.

The tenant testified that he experienced stress and interruption of his time during his tenancy. He testified that the landlord repeatedly issued Notices to End Tenancy to the tenant. The tenant testified that repairs were done to the rental unit during his tenancy. He testified that he works at home and it was therefore very inconvenient for him to leave the rental unit during the day. He also testified that he had to "get the place ready" when the contractor was coming to do work to the unit, for example removing/moving furniture or items obstructing the contractor's work. The tenant testified that, at times,

the contract work at the unit required him to sleep in a different bedroom in the rental unit.

The tenant sought \$200.00 per month for 12 months for loss of use of the rental unit kitchen for 6 days: a total amount of \$2400.00. The tenant also sought an additional \$200.00 for clean up. The tenant describes the clean-up as “cleaning up after the contractor removed everything, moving kitchen supplies and furnitures, [sic] lack of quiet enjoyment and stress, etc”

The tenant sought compensation in the amount of one months' rent for what he described as “ending the tenancy early”. The tenant also testified that he has asked the landlord to return his security deposit but the landlord accused him of taking furniture from the rental unit and will not return his deposit. He testified he provided the landlord with his forwarding address on in April 2018, shortly after he vacated the rental unit but he did not have details or proof with respect to the provision of his forwarding address.

Analysis

With respect to the tenant's security deposit, section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the entire security deposit or file an Application for Dispute Resolution. The triggering event is the latter of either the end of the tenancy or the tenant's provision of the forwarding address. In this case, the tenant provided no evidence that he had formally advised the landlord in writing of his forwarding address. Therefore, the landlord's obligation to return the deposit has not yet been triggered.

Section 38 requires a landlord to return a tenant's security deposit after provision of the forwarding address in writing. The tenant was unable to provide proof sufficient to show that the landlord received “written notice” for the purposes of service under section 88 of the *Act*. Accordingly, I find that the tenant's has not provided his forwarding address in accordance with the *Act*.

The landlord has now been notified of the tenant's forwarding address by way of the tenant's Application for this hearing. Earlier in this decision, I found that the landlord was deemed served with the tenant's Application in accordance with the *Act*. The landlord is put on notice that he is deemed to have received the tenant's written forwarding address five (5) days after the date of this decision. The landlord then has 15 days after deemed receipt to either return the tenant's full security deposit or to file an

application for dispute resolution. If the landlord does not complete the above actions within 15 days of the receipt of this decision, the tenant may re-apply for the return of his security deposit in accordance with section 38 of the *Act*. **Accordingly, the tenant's application for the return of his security deposit is dismissed with leave to reapply.**

Pursuant to section 32 of the *Act* and Residential Tenancy Policy Guideline No.16, "[the] Legislation allows a ...tenant to make a claim in debt or in damages against the other party where there has been a breach of the tenancy agreement or the *Act*. Damages [are] money awarded to a party who has suffered a loss which the law recognizes." When a tenancy agreement exists between the landlord and the tenant, both are bound to meet certain obligations. Policy Guideline No. 6 on quiet enjoyment states,

At common law, the covenant of quiet enjoyment "promis(es) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy.

And

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

The tenant claims that his landlord's repairs to the rental unit and the resulting inconvenience to him warrant compensation as a result of his loss of quiet enjoyment. It is the tenant's burden of proof to submit sufficient evidence to prove that the landlord has created or allowed a substantial interference to this tenant's enjoyment of his premises. Temporary inconvenience does not constitute a breach of quiet enjoyment - an interference that would give the tenant sufficient cause to end the tenancy would constitute a breach of quiet enjoyment.

In this case, based on the tenant's testimony and materials, I find that the landlord made efforts to minimize or resolve the issues for the tenant. When the tenant's rental unit leaked, the landlord undertook substantial repairs in the kitchen of the rental unit. The tenant acknowledged that the landlord provided him with a place to stay and that, for a few hours a day for a period of approximately 6 days, the tenant would have to vacate the rental unit.

It is reasonable to assume, based on the testimony of all parties at this hearing that each party, including the tenant was perturbed by the inconvenience after the leak however the landlord's repairs to the unit were intended to meet his obligations under the Act and supply a safe, healthy rental unit for the tenant. The standard with which to consider compensation for loss of quiet enjoyment is that the tenant was subject to **substantial interference** to the tenant's enjoyment of his premises. Based on the all of the evidence before me, I find that the tenant has not provided sufficient evidence to meet the burden of proof, on a balance of probabilities that they were **unreasonably disturbed**. I do not accept the entirety of the tenant's evidence regarding the level of disturbance. I find that the tenants have not provided evidence of disturbance beyond what is within the realm of a necessary repair with minimum inconvenience to the tenant.

I accept the tenant's undisputed and corroborated evidence that he did not have use of his kitchen for approximately 6 days. Given my finding, I order that the landlord pay the tenant a nominal amount of \$100.00 for a portion of his monthly rental unit without a fully functional kitchen.

I dismiss the tenant's claim for compensation based on a loss of quiet enjoyment and, as the tenant has been partially successful in his application, I find that the tenant is entitled to recover the \$100.00 filing fee for this application.

Conclusion

I issue a monetary order to the tenant as follows,

Item	Amount
Clean up at End of Contractor work	\$300.00
Loss of Use of Kitchen	100.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$500.00

I dismiss without leave to reapply the tenant's application for loss of quiet enjoyment.

I dismiss with leave to reapply the tenant's application to recover his security deposit.

The tenant withdrew his application to cancel the landlord's 1 Month Notice to End Tenancy as well as the request for an order requiring the landlord to comply with the

Act, to set conditions on the landlord's right to enter the rental unit and that the landlord make repairs to the rental unit.

The tenant is provided with the 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, the monetary Order may be filed in the Small Claims Division of the Provincial Court and enforced as Order of that Court.

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: June 11, 2018

Residential Tenancy Branch