



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL; CNR, MNDCT

Introduction

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

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also dealt with the tenant's cross application for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46; and
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67.

The tenant and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Amendment

The landlord confirmed that she wished to amend the landlord's Application to increase her monetary claim to include October 2018 unpaid rent and parking of \$760.00 total. I find that the tenant should reasonably have known that the landlord would suffer this

loss of income if she did not pay the rent or vacate the rental unit to allow it to be re-rented. Based on the undisputed evidence and in accordance with section 64(3)(c) of the *Act*, I amend the landlords' Application to include a monetary claim for October 2018 unpaid rent and parking of \$760.00 total.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent? If not, is the tenant entitled to cancellation of the 10 Day Notice?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord authorized to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence, including emails, text messages, miscellaneous letters, photographs, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on December 13, 2017 on a month-to-month basis. Rent in the amount of \$750.00 is payable on the first of each month. The tenant remitted a security and pet deposit in the total amount of \$750.00 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

On August 1, 2018 the tenant reported mold under her kitchen sink, to the landlord. The landlord inspected the unit this same day. On August 2, 2018, a plumber identified the source of mold as a water leak in the wall that separated the tenant's unit from the adjoining unit. The plumber repaired the leak and the area remained open, without drywall. On August 13, 2018 the landlord's maintenance person installed new drywall at the leak site, in both the tenant's unit and adjoining unit.

On September 1, 2018 the tenant attempted to pay September rent, in cash. The landlord refused the rent on the basis that cash is not an approved method of payment.

On September 4, 2018 the landlord issued a 10 Day Notice with an effective date of September 14, 2018. The tenant confirms personal receipt of the 10 Day Notice on September 4, 2018.

Landlord's Claim

The landlord applied for a monetary order in the amount of \$1,520.00 for the following;

Item	Amount
September rent/parking	\$760.00
October rent/parking	\$760.00
Total Monetary Claim	\$1,520.00

The landlord testified that the tenant knew or ought to have known that rent payments were not permitted to be made in cash as the tenancy agreement reflected this policy and the landlord had verbally told the tenant many times. The landlord admits that at the start of the tenancy, she granted some leniency to the tenant and allowed her to pay cash; however in the months leading up to September the tenant was reminded of the policy and in fact paid by e-transfer and bank draft. The landlord testified that the tenant did not attempt to pay rent by any other method for September or October 2018.

In reply, the tenant testified that she was unable to pay September rent by e-transfer as the landlord had requested because her phone was broken. The tenant testified that she had paid rent in cash before and the landlord had accepted. The tenant acknowledged that rent remains outstanding for September and October 2018.

Tenant's Claim

The tenant applied for a monetary order in the amount of \$2,330.00 for the following;

Item	Amount
Rent x 3 Loss of quiet enjoyment Harassment Health and safety	\$2,250.00
2 hours cleaning debris from plumbing repair August 2, 2018	\$80.00
Total Monetary Claim	\$2,330.00

It is the tenant's position that the landlord has breached her right to quiet enjoyment in the form of harassment and threats to her privacy and health and safety. Although the tenant has made several allegations related to the above, for the purposes of this decision, I have only relied on those in which the tenant has provided a specific incident or date. The tenant claims the following;

Date	Incident	Issue
August 1, 2018	Landlord sprayed chemicals under sink on mold	Health and Safety
August 1, 2018 to present	Mold	Health and Safety
August 2, 2018	Telephone call landlord raised voice, tenant terminated call	Harassment
September 2, 2018	Life threatened by ex-caretaker	Health and Safety
September 5, 2018	Paint crew worker enters apartment and asks for wifi	Health and Safety
September 6, 2018 to present	Weather stripping removed and not repaired	Health and Safety
September 7, 2018	Paint crew worker tapes outside window	Privacy Breach
September 14, 2018	Caretaker calls and hangs up	Harassment
September 19, 2018	Paint crew harassment outside window	Harassment
September 22, 2018	Fire extinguisher wrapped	Harassment

In reply, the landlord testified that upon report of the mold issue, it was inspected and repaired within a timely fashion. The landlord acknowledged the drywall remained open for 10 days, however she contends this was done to ensure the area was dry and free of mold before drywall was replaced. The landlord indicated that the phone call referred to above, was in relation to the tenant's demand to have the hole repaired immediately. The landlord testified that throughout the month of August the tenant continued to make complaints of mold yet denied access to her unit to allow for assessment. In regards to the rest of the tenant's monetary claim, the landlord asserts it is simply an attempt to extort money. The landlord testified that she has received countless text messages and hand written letters from the tenant throughout this tenancy. The landlord testified that

the tenant has made multiple calls and reports to the RCMP, fire department, worksafe and the city.

Analysis

Analysis of Landlord's Claim

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent and utilities the tenant may, within five days, pay the overdue rent and utilities or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch ("RTB").

Because the 10 Day Notice has been duly served and confirmed received on September 4, 2018 the tenant was required to file her application to dispute the 10 Day Notice no later than September 9, 2018. The tenant filed her application on September 11, 2018, past the allotted time. The tenant did not provide a reason for filing the application late.

For the reasons stated above, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Upon review of the submitted tenancy agreement and testimony of the parties, I find that the current rent is \$750.00 and parking is \$10.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent and parking from September to October 2018. Therefore, I find that the landlord is entitled to \$1,520.00 in rent and parking.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$750.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$770.00. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$870.00.

Analysis of Tenant's Claim

The tenant seeks \$2,330.00 in compensation for the continuous breach of her quiet enjoyment.

As per section 28 of the *Act* a tenant's entitlement to quiet enjoyment include rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit and use of common areas for reasonable and lawful purposes, free from significant interference.

Pursuant to the Residential Tenancy Policy Guideline #6 "Right to Quiet Enjoyment" a tenant's right to quiet enjoyment may be breached by frequent and ongoing interference or unreasonable disturbances. Situations in which the landlord directly caused the interference and situations in which the landlord was aware of interference and failed to take reasonable steps to rectify it would constitute a breach.

A breach of quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the *Act*. When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim.

To prove a loss, the applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

In relation to the tenant's allegation that the landlord sprayed chemicals on the mold and in turn this jeopardized her health, I find the tenant has failed to substantiate this claim with sufficient evidence. The tenant has not provided the type of chemical or sufficient documentary medical evidence. Further I find any action in this regard was more likely an attempt by the landlord to maintain the premises as required under the *Act*; not a breach of quiet enjoyment.

The evidence is clear that the landlord acted promptly upon notification of the mold. I accept the evidence of the landlord that the drywall was left off for 10 days in an attempt

to dry out the water leak area. Given the circumstances, I find this is a reasonable action to take. The tenant's claim that the mold remained even after the drywall was replaced on August 13, 2018, is not supported with sufficient evidence. Rather, I find based on the balance of probabilities and the evidence before me, that the mold was rectified on August 13, 2018. Further, I find that the tenant failed to mitigate her loss by filing an application for a repair order.

I find the tenant failed to prove that the August 2, 2018 phone call, which was initiated and ended by her, constitutes a breach of quiet enjoyment in the form of harassment.

Although the tenant submitted a text message in which she reports to the landlord a threat on her life had been made by the ex-caretaker, in the absence of any further corroborating evidence that this actually took place or that the landlord caused such an action, I find the tenant has failed to establish this as a breach of quiet enjoyment.

The tenant explained that on September 5, 2018 a painter followed her invited guest into her unit, and asked to use her wifi. Temporary discomfort or inconvenience does not constitute a basis for a breach of quiet enjoyment.

Weather stripping removed and not replaced is certainly an inconvenience, however I find the tenant failed to mitigate her loss by filing an application for a repair order.

The painter working outside the tenant's window was a result of the landlord attempting to maintain the premises as required under the *Act*, therefore I find any invasion of privacy was temporary at best and does not form a breach of quiet enjoyment.

In regards to the September 14, 2018 phone call, I find the tenant has failed to substantiate this was an intentional action of the caretaker, or that it was substantial enough to warrant compensation for a breach of quiet enjoyment.

In the absence of witness testimony or recording, I find the tenant has failed to substantiate her claim that the painter harassed her outside her window.

Based on the photograph and testimony of the parties, I find that the caretaker wrapped the fire extinguishers throughout the building with paper during the painting process in an effort to satisfy the tenant. The photograph depicts what appears to be a fire extinguisher wrapped in paper which reads, "FIRE EXT AT [TENANT'S NAME] REQUEST!" I find that the caretaker ought to have reasonably known that this would be unwelcome as it signalled out the tenant. However because this was a one-time

incident and not ongoing or repeated behaviour I find it does not meet the criteria of a breach of quiet enjoyment.

Individually or combined, the actions established by the tenant do not support a finding that the landlord has breached the tenant's right to quiet enjoyment.

Upon review of the submitted photographs and documentary evidence I am not satisfied it took the tenant 2 hours at the rate of \$40.00 to clean up after the plumber on August 2, 2018 or that the dust depicted is even a result of the repair on August 2, 2018. The photograph is undated and depicts a minimal amount of drywall dust. Overall, I dismiss the tenant's claim for monetary compensation without leave to reapply.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

I issue a monetary order in the landlord's favour in the amount of \$870.00 against the tenant.

The tenant's entire claim 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: October 25, 2018

Residential Tenancy Branch