



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, ERP, LRE, AAT, LAT, FFT

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting:

- Monetary order of \$35,000.00 as compensation;
- Emergency repairs;
- Suspension of the Landlord’s right to entry;
- Order allowing guests access;
- Authorization to change locks;
- And, payment of the filing fee.

Representatives for each of the Landlord and Tenant appeared for the scheduled hearing (hereafter referred to as “Landlord” and “Tenant”). Neither party raised a concern about the service of the Notice of Hearing; however, the Landlord states that no documentary evidence was served or received from the Tenant. The Tenant explained that she attempted to hand-deliver the evidence package to the Landlord but that some sort of violent incident erupted and she was unable to deliver the documents; there was no attempt to send the evidence by registered mail, although that was the method the Tenant used to serve the Notice of Hearing. As I am not satisfied that the Landlord was properly served, I will not consider the documentary evidence submitted by the Tenant.

The Landlord waited to file a response and as he did not receive any evidence in advance of the hearing, he submitted his own evidence package in response only one day prior to the scheduled hearing. Under rule 3.15 of the Rules of Procedure, the Respondent must serve and file evidence at least 7 days prior to the hearing. As the evidence was filed late, it is prejudicial to the Tenant and I am not prepared to consider that evidence either.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all testimonial evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The parties agreed that the tenancy ended on September 23, 2018, negating the need to consider several of the claims against the Landlord. Accordingly, the claims for emergency repairs, suspension of the right to enter, access by guests and authorization to change the locks are dismissed without leave to reapply. The hearing commenced, with only the issue of the monetary claim for compensation and the filing fee to be considered.

Issues to be Decided

Is the Tenant entitled to a monetary order for compensation for breach of the Residential Tenancy Act or tenancy agreement, pursuant to section 67 of the Residential Tenancy Act ("Act")?

Is the Tenant entitled to payment of the filing fee of \$100.00 pursuant to section 72 of the Act?

Background and Evidence

This was a verbal agreement to rent the back half of the Landlord's home commencing December 15, 2013; the latest rent amount was for \$746.95, payable on the 15th of each month. A \$350.00 security deposit was paid.

The Tenant appeared distraught while providing testimony and had difficulty expressing her evidence, citing instead references to several previous decisions of the Residential Tenancy Branch (RTB) as grounds for the claim. She explained that the family was forced to eat out due to the hood of the stove leaking water and mold that had developed inside the rental unit. In addition, she claims the Landlord repeatedly refused to follow orders of the Residential Tenancy Branch (RTB), forcing the family to do their laundry elsewhere as access to the laundry room was denied. The claim of "rental assistance" and the evidence was not clear. Aside from these comments, the Tenant stated that "*there is nothing for me to say*" and that the evidence was contained within the previous decisions rendered by the RTB, which were submitted for reference. She stated that the Landlord has failed to follow the previous orders and that compensation is needed.

The monetary worksheet includes the following specific claims for reimbursement:

Laundry bills (June 19 – July 9)	\$155.00
Laundry bills (July 17 – Aug 4)	\$115.00
Rental Assistance	\$2,400.00
Restaurant expenses	\$13,950.00
Filing Fee	\$100.00

The balance of the claim of \$35,000.00 relates to damages for the breach of rights and previous orders of the RTB. The Tenant alleges a breach of section 28 and the right to quiet enjoyment, as well as compensation for the Landlord's non-compliance with previous orders issued against him. The Tenant describes this tenancy as a "*terrible experience*" which has left both her and her husband very unwell due to stress. The Tenant describes the Landlord as "*so mean*" and "*has no heart*". She stated that the kids were unable to play outside the house which has made them depressed and that they are unable to do their jobs due to "*regular harassment, stress given by Landlord daily*". There are claims that the Landlord took photos and videos of their guests, called police by making false allegations, yelling at them in the presence of others, that they had about \$4,000.00 go missing after the Landlord's son entered their home, and that the conduct and actions of the Landlord have made it impossible to continue to reside at the rental unit. The Tenant states that the constant threats and attempts to evict them amount to an abuse of the system and that compensation ought to be awarded.

The Landlord replied that keys were turned over and that the condition of the rental unit is "*absolutely disgusting*", warranting a claim against the security deposit, which is forthcoming. She testified that the oven was checked at the end of the tenancy and 3 of the 4 burners worked fine. She states that although there are claims of assault against members of her family by the Tenant, no charges were ever laid against the Landlord or his family members. The police advised them to have no contact with the Tenant, which she explains as the reason for not providing a key to the laundry room to the Tenant; she admits no access was granted, in contravention of previous orders of the RTB. The Landlord disputes the claims of the Tenant, stating there are no receipts for meals out or laundry bills or expenses. She argues that the claims of the Tenant are false, saying she could hear the Tenant's family cooking in the kitchen many nights. The Landlord claims that there was a petition sent around the neighborhood asking for the removal of the Tenant and his family due to ongoing disputes and disruptions, and that many people signed it.

Analysis

Under section 7 of the Act, a party who fails to comply with the Act, regulation, or tenancy agreement must compensate the other party for damage or loss that results. To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. that a damage or loss exists;
2. that the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. the value of the damage or loss; **and**
4. steps taken, if any, to mitigate the damage or loss

The Tenant has the burden of proof to show liability and for the amounts claimed.

I have reviewed the previous decisions of the RTB and it is apparent that the Tenant made similar claims against the Landlord in the past. Any decision with respect to the same claim for the same matter which has already been decided is considered to be *res judicata*, which means that I am not authorized to hear that claim again. I am only authorized to hear claims that were not previously decided, or new claims that arose since the last decisions were rendered. My decision reflects this.

In a decision rendered February 19, 2018, the Arbitrator found:

“Based on section 27 of the Act and the landlord’s obligation to provide laundry facilities or reduce rent to compensate for the termination of laundry facilities, I order that the landlord allow the tenant HB access to the laundry unit a minimum of 2 regular days per week for a minimum of 6 designated hours each day.”

And further,

“Based on the requirement of section 32 of the Act, that the landlord maintain the property in a manner that complies with health and safety standards and based on the tenant’s allegations that there is mold in the rental unit, I order the landlord and tenant to split the cost of a qualified mold inspector. The inspection will take place on or before April 30, 2018. Any action necessary as a result of the inspection are required to begin by May 30, 2018. ...

The tenants also applied for repairs of the oven and stove. The tenants provided undisputed testimony that they have requested repairs to the oven and stove. Therefore, I order that the landlord make investigation and repair as needed to the oven and stove, including the hood vent by March 31, 2018....

Based on the 7 receipts submitted by the tenants, their costs, at minimum have been \$190.00 to take their laundry out of the home. As I have found that the landlord has restricted the laundry access unduly, I find that the tenants are entitled to recover the \$190.00 spent on laundry services.”

In a subsequent hearing held on June 19, 2018, the Tenants requested a monetary order to get repairs completed, monetary compensation and for an order requiring the Landlord to comply. The Arbitrator determined in his decision of June 29, 2018:

“ I accept the tenant’s undisputed testimony that the landlord failed to comply with the order made by the Arbitrator in the decision dated February 19, 2018 by not giving the tenant access to the “laundry unit a minimum of 2 regular days per week for a minimum of 6 designated hours each day.” . As a result of the landlord’s failure to comply with the Arbitrator’s order, the tenant suffered a monetary loss, and supported that loss with receipts. On this basis, I allow the tenant’s a monetary order in the amount of \$575.00 for the cost of the laundry.

It was also undisputed that the landlord has failed to abide by the Arbitrator's orders in the decision dated February 19, 2018. I order that the landlord comply with the orders previously made, immediately and without any further delay. I order that the landlord communicate and respond to the tenant's written requests in writing. If the landlord fails to comply with the orders of an Arbitrator, or with the Act, or regulation, and if the tenant suffers any further losses due to the landlord's failure to do so, the tenant may file an application to recover the losses associated with the landlord's failure to comply with the orders and the Act, including an application for a rent reduction for the services not rendered."

Another hearing was heard on July 24, 2018, wherein the Tenant again asked for similar relief. The Arbitrator found:

In the current application before me, I note that the Tenant applied for dispute resolution on May 23, 2018, which was 27 days before the hearing for his previous application. The Tenant's current application contains a request for relief for many of the same issues that were previously heard.

The Arbitrator concluded:

*I find that the most important matter to determine is whether or not the tenancy is ending due to non-payment of rent. The previous monetary amounts granted to the Tenant in the previous hearings will be considered in determining whether or not the rent was paid. The remainder of the Tenant's claims are **dismissed with leave to reapply**. [bolding added]*

Over the course of these hearings, the Landlord made multiple attempts to evict the Tenant and his family, none of which resulted in an Order of Possession being granted due to insufficient evidence to support the grounds for ending the tenancy.

With respect to the Tenant's claim for laundry expenses of \$155.00 and \$115.00, I am satisfied that there is undisputed evidence that the Tenant was not given access to the laundry, this after several hearings and orders requiring the Landlord to provide access. I am awarding the costs as presented by the Tenant, and find that it is reasonable to award the sum of **\$270.00** to the Tenant for having to take laundry elsewhere for regular cleaning during the dates noted.

With respect to the issue of restaurant expenses of \$13,950.00, there is a lack of evidence that this expense was incurred or that the stove was in a condition that it could not be used. The Tenant did not provide receipts into evidence and the Landlord disputes the claim entirely, stating she heard the Tenant and his family cooking in the rental unit and that 3 of the 4 burners of the stove were working upon moving out. However, I do note that the Landlord had a deadline to investigate the Tenant's complaints about the stove and issues they say that they were having. The Landlord did not present evidence that the stove and hood was investigated by a qualified mechanic by March 31, 2018 as was ordered on February 19, 2018, which is a

clear breach of the order granted against him. Rather, the Landlord testified that the stove was tested after the Tenant and his family moved out on September 23, 2018.

It is unclear what the rental assistance claim of \$2,400.00 pertained to, the Notice simply indicating that the Landlord refused to give cash receipts and that they were unable "to take rental assistance". I am not satisfied that the Tenant has provided evidence to support that claim and I am dismissing it.

Based on the monetary worksheet submitted by the Tenant, I assume that the balance of the \$35,000 claimed equates to \$18,280.00 for the breach of rights and non-compliance with previous orders. Section 28 of the Act states:

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:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

I find that the evidence shows that the Landlord made multiple unjustified attempts to evict the Tenant and his family over the course of several months, forcing the Tenant to several other hearings to dispute eviction notices. In every instance, the request for an Order of Possession was denied for reasons provided in a written decision. I further find the evidence of the Tenant to be credible; it is clear that there was a campaign launched against them to have the family removed at any cost. The Landlord systematically ignored requests for needed repairs, dismissing them without investigating. The Landlord ignored the order of the RTB to carry out an investigation into allegations of a broken stove/hood and mold concerns and there is no evidence before me to suggest that the Landlord made any attempt whatsoever to determine whether there was an issue that needed addressing. The Landlord was repeatedly ordered to allow the use of the laundry facilities and ignored those orders of the RTB as well.

Based on the evidence before me, which includes the past decisions and the testimony of the two participants in the hearing, I find that there is adequate evidence to support a claim for breach of Tenant's right to quiet enjoyment of the rental unit as their tenancy was constantly in jeopardy due to the conduct and actions of the Landlord. In addition, I further find that the Tenant is entitled to monetary compensation for the Landlord's clear lack of compliance with orders of the RTB. This resulted in significant concerns, stress and inconvenience to the Tenant and his family.

I also find that the Tenant took measures to mitigate his losses by attempting to deal with matters by addressing ongoing concerns with the Residential Tenancy Branch. There was nothing further the Tenant could have been expected to do under the circumstances. The arbitrators had awarded compensation in several of the decisions for specific losses to certain dates, and ordered compliance on the part of the Landlord which was ignored. Accordingly, I find that the Tenant is entitled to compensation equivalent to seven month's rent, in the sum of **\$5,200.00**.

As the Tenant was partially successful, I am also awarding the sum of **\$100.00** for the filing fee. The final award is calculated as follows:

The final monetary order is calculated as follows:

Item	Amount
Laundry expenses	\$270.00
Loss of Quiet Enjoyment	5,200.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$5,570.00

This order must be served on the Landlord and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlord fails to make payment. Copies of this order are attached to the Tenant's copy of this Decision.

The Landlord has not received a forwarding address from the Tenant, who stated at the conclusion of the hearing that she is not comfortable providing same. The Tenant was asked to provide an alternate address for service, but stated that she was only prepared to accept any documents via email at the email address stated in this Application. Accordingly, the Landlord is granted leave to serve papers or arrange payment through this email address and the Tenant is directed to leave this email address in place and to monitor it for a period of two years, as it will be considered the Tenant's address for service by the Landlord now that the tenancy has ended and the Tenant has moved out.

Conclusion

The Landlord shall pay the sum of \$5,570.00 forthwith to the Tenant.

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 1, 2018

Residential Tenancy Branch