



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNR MT OLC PSF RR MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a number of items of relief. At the outset of the hearing the parties testified that the tenant has vacated the rental unit and the only outstanding item sought is a monetary award for damages and loss pursuant to section 67.

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 tenant was assisted by her advocate. Towards the end of the hearing the tenant's phone line experienced slight connectivity issues but the tenant's full testimony was heard.

As both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution, evidentiary materials and amendment to the application. The landlord stated they had not served any evidence of their own. Based on the undisputed testimonies I find that the landlord was served with the tenant's materials in accordance with sections 88 and 89 of the *Act*.

At the At the outset of the hearing, the tenant made an application requesting to amend the monetary amount of the claim sought. The tenant indicated that there were arithmetic errors in the amount of the monetary claim contained in their monetary order worksheet. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as correcting a calculation error is reasonably foreseeable and does not unfairly prejudice a party, I amend the tenant's Application to increase the monetary claim from \$1,188.20 to \$1,227.27.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Background and Evidence

The parties agree on the following facts. The tenant first moved into the rental unit in January, 2017. The monthly rent was \$270.00. In addition the tenant was responsible for paying the utilities to the rental unit. The rental unit is a trailer situated on property owned by the landlord. The landlord resides in a building on the property.

The tenant was issued a hand-written letter by the landlord in August, 2017 following several verbal notices that the landlord wanted this tenancy to end. The landlord demanded a move-out date of August 30, 2018 on the letter.

The tenant sought legal advice and was advised that the hand written letter was not a valid Notice to End Tenancy and is of no force or effect. The tenant's advocate drafted a letter to the landlord advising the landlord of the invalid nature of their letter attempting to end tenancy. The letter was dated August 7, 2017. The tenant gave the landlord a copy of the letter on or about August 27, 2017.

After being provided the letter from the tenant's advocate the landlord took measures including shutting off utility services to the rental unit, issuing Notices to End Tenancy in the prescribed form and entering the rental unit to remove the tenant's personal possessions. The tenant submitted photographs into documentary evidence showing the tenant's personal possessions left on the ground outside of the rental unit. The landlord confirms that they did cut the utility services to the rental unit but disputes that they entered the rental unit.

The tenant testified that due to the landlord's behaviour and attitude she suffered loss of quiet enjoyment. She characterizes the landlord as aggressive and threatening. She said that the loss of utilities to the rental unit caused her severe disruption in her daily routine and her food spoiled with the lack of electricity for refrigeration. She said that the rental unit was effectively uninhabitable during the month of September due to the landlord's campaign of harassment.

Analysis

The landlord submitted that this tenancy falls outside of the Act as it is vacation accommodation. The landlord testified that during some months the landlord occupies the trailer and therefore the trailer is vacation accommodation.

Section 4(c) of the *Act* sets out living accommodations to which the *Act* does not apply. It reads in part as follows:

- 4 *This Act does not apply to...*
 (e) *living accommodation occupied as vacation or travel accommodation,...*

Vacation accommodation in this respect refers to living accommodation that is occupied by a tenant for the purposes of temporary travel or vacation accommodation. Whether the landlord occupies or intends to occupy the rental unit is irrelevant to the determination of if a rental unit is vacation or travel accommodation. Accordingly, I find that there is no evidence in support of the landlord's submission that this is vacation or travel accommodation such that the *Act* does not apply.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. 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/loss, and that it stemmed directly from a violation of the agreement or a contravention 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I accept the undisputed evidence of the parties that the landlord shut off the utilities to the rental unit. Pursuant to section 27 of the *Act* a landlord must not restrict or terminate services or facilities that are essential to the use of the rental unit or a material term of the agreement. I find it self-evident that electricity, hot water, water and heating are all essential services. I find that the landlord was in gross violation of the Act by shutting off these services as a retaliatory measure.

I accept the tenant's evidence that the landlord caused a loss of quiet enjoyment of the premises due to their unauthorized restriction of essential services. I accept the

tenant's evidence that without the regular use of the utilities the rental unit was high-uninhabitable.

I further accept the tenant's evidence that the loss of electricity for refrigeration led to the spoiling of her foodstuffs. The tenant has provided a detailed inventory of the foods that she lost due to the landlord's actions. Though the tenant did not have the original receipts for the purchase of the items, she submitted photographs of the spoiled refrigerator contents. I accept the tenant's evidence that she suffered loss due to the landlord's violations.

I accept the evidence that the tenant's personal possessions were removed from the rental unit and discarded outside by the landlord. I accept the tenant's evidence that this was not authorized and that she suffered loss as the items were left in the elements.

The landlord disputes that they emptied the rental unit of the tenant's possessions. I do not find the landlord to be a credible or believable witness in this regard. The tenant's testimony is corroborated by photographs showing the state of the rental property and her items left on the ground. The landlord's testimony primarily consists of personal attacks on the tenant's character, logically inconsistent proclamations and statements that contradict his own earlier evidence. The landlord scoffed at the tenant's submissions but did not present a convincing or believable alternative version of events. I find that the landlord to be an unreliable witness and his testimony disputing that he caused or contributed to the tenant's losses to be without merit.

I find that on a balance of probabilities the tenant has shown that she suffered damages and loss as a result of the landlord's violations. I find that the tenant has provided sufficient evidence through testimony, written estimates and some invoices to show the value of the losses suffered. Based on the foregoing I find that the tenant is entitled to a monetary award of \$1,227.27 the amount claimed in their application.

Conclusion

I issue a monetary award in the tenant's favour in the amount of \$1,227.27.

The tenant is provided with this Orders\ in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with the

Order, these Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 16, 2018

Residential Tenancy Branch