



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*.

Both the tenant and the landlord tenant attended the hearing. The tenant called into the hearing by way of conference call, while the landlord and her son, C.A. (the “landlords”) attended the hearing in person. All parties in attendance at the hearing by phone and in person were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

Both parties confirmed receipt of each other’s evidentiary packages, while the landlords confirmed receipt of the tenant’s application for dispute. I find both parties were duly served in accordance with the *Act*.

The tenant said she was unable to access some digital evidence that was submitted to the hearing by the landlord. This evidence was not considered in my decision below.

Issue(s) to be Decided

Is the tenant entitled to a monetary award?

Background and Evidence

The tenant explained this tenancy began in July 2007 and ended following a settlement agreement to end the tenancy on August 25, 2016. Rent was \$700.00 per month (plus \$100.00 for utilities) and a security deposit of \$350.00 paid at the outset of the tenancy was returned to the tenant.

The tenant is seeking a monetary award of \$33,781.88 for alleged loss during the tenancy. The tenant said this amount reflected several breaches of the *Act* and caused her to suffer from a significantly diminished ability to enjoy the rental unit. Specifically, the tenant sought aggravated and tort damages for; purported illegal entries, a loss of cable and internet services, expenses related to a storage unit, personal injury, a loss of quiet enjoyment and the denial of toilet and shower facilities at some points during the tenancy.

The tenant described an acrimonious relationship with the landlord which worsened throughout the tenancy. The tenant said a large portion of her application related to her experiences in the rental unit during a renovation project on the property. Specifically the tenant sought compensation as follows:

Item	Amount
Storage costs added to rent	\$1,731.00
Miscellaneous (hired help, gas & associated costs)	170.00
Application costs	491.45
Illegal entry @1,000.00/entry	12,000.00
Cable costs	4,857.50
Internet costs	2,856.00
Return of monies not agreed on rental agreements	2,464.00
Compensation for four months' rent @700.00	2,800.00
Personal Injuries	4,169.45
Breach of Quiet Enjoyment	700.00
Table	150.00
	\$32,389.40

Both parties entered a significant volume of evidence. The tenant's evidence consisted of a detailed written summary of her application, several rental receipts, numerous invoices for Shaw, various photos of the rental unit and property, a breakdown of her application for a monetary award, a calendar recording purported illegal entries to the suite, medical documentation and numerous receipts. The tenant said these documents supported her application for dispute and provided evidence of her loss under the *Act*

and tenancy agreement. Each party submitted large evidence packages and substantial testimony. I have considered all documentary evidence including photographs and testimony; however, I will only refer to key relevant evidence in my Decision.

The tenant alleged she suffered a significant loss as a result of a violation of the tenancy agreement which included a denial of cable and internet services that were to be included with her monthly rent per the terms of her tenancy agreement. In addition, the tenant said she paid for off-site storage because of construction work on the home. She described a complicated scenario whereby the landlords would pay for her off-site storage and then add these charges to her monthly rent. The tenant sought a return of these funds.

A large portion of the tenant's application related to compensation for alleged illegal entries of the rental suite. She described a number of connections to utilities which were located in her suite and said the landlord, along with contractors, would frequently enter the unit without notice. The tenant seeks \$1,000.00 per entry for these entries.

In addition, the tenant said she was seeking compensation for; a damaged table which she described as a family heirloom; medical costs and loss of wages related to an injury suffered on the property after the tenant tripped over a ladder, breaches of quiet enjoyment related to entries and a lack of bathroom/shower facilities and consequentially a return of rents.

The landlords disputed that any compensation should be due. They explained that cable and internet services were available throughout the tenancy and said disruptions to services were common due to the rural nature of the property. The landlords said several internet routers were present in the home and presented several internet and cable invoices in support of their claim. The landlords said all efforts were made to accommodate the tenant's internet and cable needs. The landlords acknowledged that a significant renovation project had taken place on the property but they argued appropriate steps were taken to ensure the tenant was not unnecessarily disturbed. The landlords confirmed that the tenant was without the use of bathroom and toilet facilities at some points during the renovations but said these renovations were done at the tenant's behest, and they noted the toilet and shower on the main floor of the home were made available to her.

The landlords agreed with the tenant's account of the storage situation but disputed any compensation should be due because the landlords had provided the tenant with two free alternatives for storage on the property.

The landlords sought a dismissal of the entire portion of the tenant's application as it related to illegal entries, stating that, save for one occasion, the tenant was always given adequate notice in accordance with the *Act*. The landlord explained the tenant had requested repairs to the bathroom and therefore they "assumed" further notice was not required as the access was not required to undertake the requested repairs.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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. In this case, the onus is on the tenant to prove her claim for a monetary award.

This section must be read in conjunction with *Residential Tenancy Policy Guideline #16* which notes, "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due." I will therefore, as noted above, be examining whether the landlords failed to comply with the *Act*, regulations or tenancy agreement.

The largest portion of the tenant's application concerned alleged illegal entries of the unit by the landlord and contractors. *Residential Tenancy Policy Guideline #7* notes -

A landlord must not enter a rental unit in respect of which the tenant has a right to possession unless one of the following applies:

- *an emergency exists and the entry is necessary to protect life or property*
- *the tenant gives permission at the time of entry, or*
- *the tenant gives permission not more than 30 days before the time of entry,*
- *the landlord gives the tenant written notice not less than 24 hours, and not more than 30 days before the time of entry*

Regarding written notices, the notice must state a reasonable purpose for the entry and must give the date and time intended for the entry. The time stated must be between 8:00 a.m. and 9:00 p.m.

Where a notice is given that meets the time constraints of the Act, but entry is not for a reasonable purpose, the tenant may deny the landlord access. A "reasonable purpose" may include:

- *inspecting the premises for damage,*
- *carrying out repairs to the premises,*
- *showing the premises to prospective tenants, or*
- *showing the premises to prospective purchasers.*

However, a "reasonable purpose" may lose its reasonableness if carried out too often. Note that under the Act a landlord may inspect a rental unit monthly. Where possible the parties should agree beforehand on reasonable times for entry. Where the parties cannot agree on what are reasonable times, and the tenant's quiet enjoyment of the rental unit is interrupted (for example where the house is listed for sale and there are numerous showings of the rental unit), the tenant may apply for arbitration to suspend the rights of the landlord, or an Order that the landlord's right of entry be exercised only on conditions.

The tenant may not prevent a landlord from entering to carry out repairs, where a valid notice of entry has been given, even if the tenant is capable, and willing to carry out the repairs.

I find the landlords, while well intentioned, did inadvertently fail to provide the tenant with adequate notice of entry pursuant to section 29 of the Act. I find the amount of compensation sought by the tenant to be excessive in light of the construction being carried out for her benefit and at her request. I find an award of \$10.00/entry to be more appropriate in light of the harm described and purposes for entry. I therefore award the tenant a monetary award of \$100.00 for illegal entries.

Another significant portion of the tenant's application concerned a refund for cable and internet services which she stated were not supplied by the landlords despite being included with her monthly rent. I find the tenant had failed to provide sufficient evidence in support of this argument establishing only that servers were occasionally not functioning. I accept the landlords' testimony that all reasonable efforts were made to ensure the tenant had access to the internet despite geographical limitations and that

several routers were present in the home. For these reasons, I dismiss this portion of the tenant's application.

The tenant is seeking a large amount of compensation for loss of quiet enjoyment as a result of the construction which took place on the property, as well loss which resulted from a trip and fall on the property.

Residential Tenancy Policy Guideline #6 notes –

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

I find the majority of the tenant's complaints centered on disturbances which could reasonably be anticipated by persons living in a unit which is subject to construction. Little evidence was presented that the contractors or landlords engaged in construction at odd hours, or made overt attempts to *directly* interfere with the tenant's right to quiet enjoyment. Furthermore, some aspects of the renovations (the bathroom) were undertaken at the request of the tenant herself and alternative facilities were provided to the tenant in the same home. I therefore dismiss this portion of the tenant's application.

In addition to loss of quiet enjoyment, the tenant sought to recover fees related to medical costs she incurred as a result of a trip and fall. The tenant maintained the landlord was responsible for her injuries because of the ongoing presence of debris in the backyard of the property. I must therefore determine the extent to which the landlord owed the tenant a duty of care as it relates to the *Act*. The landlord has a common law duty not to be negligent or to create a nuisance but those are matters beyond the scope

of the *Act* over which I have no ability to award compensation. In this case, the duty to the tenant arises under the tenancy agreement or the *Act*, specifically the right to quiet enjoyment pursuant to section 28 of the *Act* and the duty to repair and maintain property under section 32 of the *Act*.

I find the tenant has failed to explain how the landlord's actions contributed to her injuries. While, the tenant maintained the landlord's improperly maintained their back yard, I find little evidence was presented which directly connected the trip and fall with the presence of construction items in the yard. The tenant failed to show that the alleged hazards could not reasonably have been avoided, or that the landlord's actions amounted to a negligent act. For these reasons, this portion of the tenant's application is dismissed.

The final portion of the tenant's application related to compensation for a return of funds paid for storage, a damaged table, "miscellaneous" and application costs.

The tenant explained she had entered into an unusual arrangement whereby her items were placed in storage and because of her inability to access a credit card, the costs associated with this storage were paid by the landlord and added to her rent. The landlord's maintained that other, free options were also made available to the tenant on the premises; however, these offers were rebuffed by the tenant as she sought secure storage for her items. As noted above, compensation will only be given pursuant to section 67 of the *Act* when loss can be shown to have stemmed directly from a violation of the tenancy agreement or a contravention of the *Act*. I find the landlords' made sufficient efforts to accommodate the tenant's storage needs and to provide free alternatives. Given this, it was the tenant's choice to pay for off-site storage, so any costs which were incurred as a result of off-site storage being used must be absorbed by the tenant.

The tenant sought \$150.00 to a table which she described as a family heirloom. The damaged for which the tenant sought compensation was described by the tenant as "scratches on top...tiny sliver of veneer lifted off." I find the damage pictured in images submitted by the tenant, along with their accompanying damage claim do not support an award of \$150.00. No invoices for repair or other documents were supplied by the tenant in support of this claim. I accept some damage was done to the table by the landlord and award the tenant \$15.00 in compensation for the damaged table based on the description of "nominal damages" as provided by *Policy Guideline 16*. It notes, "Nominal damages" are a minimal award. Nominal damages may be awarded where

there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Section 72 of the *Act* states as follows, "The director may order payment or repayment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party." Section 59 as described above relates to an application for dispute. Therefore, pursuant to section 72 of the *Act*, I am only empowered to return filing fees as they relate to the application for dispute. As the tenant was partially successful in her application, I award her \$100.00 in satisfaction for a return of all associated fees.

Conclusion

The tenant is granted a monetary award of \$215.00.

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: December 19, 2018

Residential Tenancy Branch