Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, LAT, MNDCT, FFT

Introduction

This decision is in respect of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenants seek the following remedies:

1. an order for emergency repairs;
2. a lock change authorization;
3. compensation for stress, libel and slander, and other various expenses; and,
4. compensation for recovery of the filing fee.

A dispute resolution hearing was convened and the tenants, landlord, and two witnesses for the landlord attended the hearing. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Are the tenants entitled to an order for emergency repairs?
2. Are the tenants entitled to a lock change authorization?
3. Are the tenants entitled to compensation for stress, libel and slander, and other various expenses?
4. Are the tenants entitled to compensation for recovery of the filing fee?

Background and Evidence

At the outset of the hearing I sought clarification from the tenants regarding what it was that they were seeking an order for emergency repairs for. They explained that this aspect of their claim dealt with a cut window screen, and a question as to who was responsible for repairing it, and who was responsible for paying for that repair. I explained the a cut, or damaged, window screen did not fall under one of the defined categories of emergency repairs under section 33(1) of the Act, and as such, I would be unable to grant an order for the window screen. The tenants acknowledged their understanding of this.

The tenants sought an order authorizing them to change the locks of the rental unit. One of the tenants testified that the tenant's medications went missing out of the rental unit, and that the landlord must have gotten access to, and taken, the medications by entering the rental unit without authorization. The tenant testified that the missing medication, in conjunction with a plethora of other issues they had with the landlord involving alleged drug use, was "awfully suspicious." The tenants did not state when the alleged unauthorized entry occurred.

In addition, the tenants sought an order authorizing a lock change due to previous threats that the landlord purportedly made against the tenants. On August 7, 2018, the landlord apparently mentioned to a third party that the landlord was "willing to pay someone to beat us up." The police were called.

The tenants seek $5,000.00 (after amending their application) for "aggravated damages for harassment, loss of enjoyment, embarrassment and humiliation." I note that tenants' original application included a claim for $25,000.00 for "damages of character defamation." I further note that the landlord objected to the tenant's amendment; however, it is not prejudicial to the landlord that the tenants have significantly reduced the amount sought, and as such I shall not consider the landlord's objection any further.

Regarding the tenants' claim for compensation, the primary basis of their argument was that the landlord was going around telling people and businesses in the community about the tenant's drug use and drug issues. The landlord at one point visited the pharmacy from which the tenant legally obtained prescription drugs, inquiring as to the nature of those drugs.

The landlord testified as to the long, difficult relationship she has had with the tenants since 2014. She spoke of an alleged assault in 2014 and described ongoing efforts by her and that she has “tried to evict them through the years.” She denied ever saying to anyone that she would hire third parties to beat up the tenants.

In her final submission the landlord argued that there is no documentary proof that she ever libelled or slandered the tenant. She denied ever entering the rental unit as alleged by the tenants. While she acknowledged visiting the pharmacy, it was to confirm information that she had received about one of the tenants buying drugs, and that she was “just clarifying information.” Indeed, she explained that it was the pharmacy’s fault for disclosing any personal information of the tenant.

In response and final submissions, the tenants argued that the evidence submitted relates to things that the landlord told other people. She emphasized that she was harassed by the landlord attaching “letter after letter” on the front door, and the landlord’s constant complaining about all manner of things. Finally, she testified that she is a hard-working artist and that the landlord is having a negative effect on her art business by defaming her character.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Order for Emergency Repairs

The tenants sought an order for emergency repairs pertaining to a cut window screen. As explained to the tenants, such a repair does not fall under the defined categories for emergency repairs.

Section 33 defines “emergency repairs” to mean repairs that are (a) urgent, (b)necessary for the health or safety of anyone or for the preservation or use of residential property, and (c) made for the purpose of repairing (i) major leaks in pipes or the roof, (ii) damaged or blocked water or sewer pipes or plumbing fixtures, (iii) the primary heating system, (iv) damaged or defective locks that give access to a rental unit, (v) the electrical systems, or (vi) in prescribed circumstances, a rental unit or residential property.

Thus, as the type of repair sought does not meet any of the categories listed in section 33 I am unable to grant an order as sought by the tenants. I therefore dismiss that aspect of their application without leave to reapply.

Order to Change a Lock

Section 31 (3) of the Act states that "A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change."

The Residential Tenancy Branch policy 7 "Locks and Access" provides the following clarification in respect of a tenant's application to change the locks:

> Where a tenant can prove that the landlord has entered contrary to the *Residential Tenancy Act,* the tenant may apply to have the locks to the rental unit changed. The arbitrator will consider, among other things, whether an order to change the locks on a particular suite door could endanger the safety of other nearby tenants. An order for change of locks will only apply to areas where the tenant has exclusive possession.

In this case, the tenants claimed that one of the tenant's medications went missing, and that the landlord must have entered the rental unit and grabbed them. As described by one of the tenants, this was "awfully suspicious." However, the tenants provided very little additional detail regarding this mysterious disappearance of the medication, with no reference to a date on which it may have happened, or whether it was possible that the medication was simply misplaced. The landlord objected to the tenants' submission.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the tenants have failed to provide any additional evidence, over above their disputed testimony, establishing that the landlord entered the rental until contrary to the Act.

Given the above, I am not satisfied based on the disputed oral evidence of the parties that the tenants are entitled to an order authorizing them to change the locks

to the rental unit. I therefore dismiss that aspect of their claim without leave to reapply.

Compensation for Aggravated Damages for Harassment, Loss of Enjoyment, Embarrassment and Humiliation

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

The parties to a tenancy agreement must comply with the Act, the regulations or their tenancy agreement. In this case, while the landlord may (or may not) have harassed, embarrassed, and humiliated tenant, such behavior is not regulated by the Act, and as such any action against the landlord's conduct as it relates to this behavior is outside the jurisdiction of the Act. Indeed, this would also apply to any claim by the tenants (later amended) against the landlord for the tort of defamation, which may only be pursued through civil action.

As such, I dismiss these particular aspects of the tenants' claim without leave to reapply.

That having been said, a tenant may be awarded compensation where a landlord has interfered with a tenant's quiet enjoyment.

Section 28 of the Act states that "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."

In this case, the only example provided by the tenants regarding the landlord's allegedly breaching section 28 of the Act involves the landlord posting "letter after letter on the door" and the landlord's incessant complaining on "all manner of things." And, while the parties clearly have what can only be described as an acrimonious relationship, and while the tenants are clearly unhappy with the ongoing communication with the landlord, the conduct as described above does not rise to the level of an unreasonable disturbance such that compensation may be awarded,

and I do not find, based on the oral and documentary evidence that the tenants have met their onus of proving on a balance of probabilities that the landlord breached section 28 of the Act. As such, I dismiss this aspect of their claim without leave to reapply.

As the tenants are unsuccessful in their application I dismiss their claim for compensation for recovery of the filing fee.

Conclusion

I dismiss the tenants' application 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 Act.

Dated: December 5, 2018

Residential Tenancy Branch