



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 24, 2018 (the "Application"). The Tenant applied for compensation for monetary loss or other money owed, return of double the security deposit and reimbursement for the filing fee.

This matter came before me for a hearing November 26, 2018 and an interim decision was issued December 05, 2018. This decision should be read with the interim decision.

The Tenant appeared at the adjourned hearing. Nobody appeared at the adjourned hearing for the Landlord. RTB records show the Notice of Hearing for the adjourned hearing was sent to the parties December 14, 2018 by the RTB. At the first hearing, the parties were told to call the RTB if they did not receive a new Notice of Hearing within two weeks. The parties were told they had to appear at the next hearing date. I proceeded with the hearing in the absence of the Landlord.

The Tenant had sought \$1,633.75 in compensation in the Application. This consisted of the following:

1. \$10.50 for sending the Landlord a demand letter by registered mail;
2. \$23.25 for USB drives for the hearing;
3. \$800.00 for double the security deposit;
4. \$700.00 for compensation for loss of quiet enjoyment; and
5. \$100.00 for reimbursement for the filing fee.

I dealt with item number 1, 2 and 3 in the interim decision.

I explained the hearing process to the Tenant who did not have questions when asked. The Tenant provided affirmed testimony. The Tenant was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions.

I have considered all documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to \$700.00 for loss of quiet enjoyment?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant sought \$700.00 for loss of access to part of the property, loss of quiet enjoyment and mental stress caused by the Landlord. He said \$700.00 is 43% of his monthly rent for the last two months of the tenancy. The Tenant advised that all of the issues outlined below occurred in the last two months of the tenancy.

The Tenant testified as follows.

Issues between him and the Landlord went on for quiet some time. Him and the Landlord had been through prior dispute resolution hearings. The Landlord served him with a One Month Notice in September of 2016 which he successfully disputed. The Landlord then served him with a Two Month Notice which he successfully disputed. The relationship between the parties deteriorated after this. The Landlord just wanted him out.

The Tenant used the shed on the property to store his larger items. He had a key to the shed. In December, the Landlord changed the lock to the shed and did not provide him with a key. The Landlord did not give him notice of this and did not reduce rent. He did not have anything in there at the time. There was no written tenancy agreement in this matter. Him and the Landlord did discuss use of the shed as the Landlord asked that he store his larger items in there. The Landlord breached section 27 of the *Act* in this regard.

The Landlord contacted his references and co-workers and asked them personal questions about the Tenant. This was not at the start of the tenancy but near the end. The Landlord admits to doing so in the video submitted. This is a violation of section 28 of the *Act*. This caused him extreme mental stress. The Landlord had no right to do this as it is a breach of his privacy.

The Landlord went through his garbage. This is a violation of section 28 of the *Act*. This is supported by the videos submitted. The Landlord invaded his privacy. This caused him mental distress.

He caught the Landlord outside his window filming him. This is a violation of section 28 of the *Act*.

The Landlord refused to fix the washing machine. He posted a letter on her door October 4, 2016 advising her that it was broken. He did not cause the issue with the washer. The Landlord was aware of the problem which is shown in the video evidence submitted. The Landlord never fixed the washer. This is a breach of section 27 of the *Act*.

After the relationship deteriorated, the Landlord would not answer her door and she did not leave a contact name or number for him to call when there were issues with the rental unit. His water was shut off many times during the tenancy. He knocked on the Landlord's door but she did not answer. The police then attended saying they were told he was trying to gain entry into the Landlord's house. The Landlord's failure to provide a contact person and failure to be available is a breach of section 27 of the *Act*.

The Landlord would shut his water off without giving him sufficient notice that this was happening. His water was shut off 10 times in the last two months of the tenancy. This is a breach of section 28 of the *Act*.

The Landlord constantly tried to enter the rental unit to do inspections under section 29(f) of the *Act* stating they were necessary for emergency repairs. This is supported by the video evidence submitted. The Landlord would be coming in to look at the sink. She would try to enter the rental unit without any basis for doing so. On December 12, 2016, the Landlord inspected the rental unit for one and a half hours. At the end of this the Landlord was yelling and swearing at him such that he called the police. The following day, the Landlord wanted to do another inspection. She had given notice for the wrong date. This is shown in the evidence. He left a note on the door advising the Landlord she gave notice for the wrong date and is not permitted to enter the rental unit. The Landlord entered the rental unit in any event. He called the police who attended for the third time that week.

The Landlord harassed the Tenant nightly. He was working at the time. The Landlord would wake up at night and stomp on the floor and make noise which would wake him up. The Landlord would leave her dog in the room above the Tenant and the dog would bark waking him up during the night. He let the Landlord know this was an issue. The Tenant had raised these issues in prior hearings and so the Landlord was aware there was an issue. This is a breach of section 28 of the *Act*.

The issues in the tenancy affected his mental health. He had to take two months off work. He had to take medication for mental health issues for the first time in his life. He was desperate to move out of the rental unit. He ended up renting a place that was smaller, further away than he wanted and more expensive to leave the rental unit. He took possession of his new place December 22, 2016 to get away from the rental unit and Landlord.

The Tenant submitted that the amount requested is reasonable because he could not enjoy his rental unit. He said he was constantly stressed.

In relation to minimizing his loss, the Tenant testified that he tried to leave the rental unit sooner; however, could not find a place given the tight housing market. He said he is a low-income renter and so it was difficult to find a place. The Tenant testified that he occasionally stayed with friends and tried to minimize his time at the rental unit as much as possible.

The Tenant noted two RTB decisions that he submitted were similar to this matter. He said that, in the first decision, the Tenant was awarded \$488.00 for the Landlord failing to protect them from noise and verbal abuse. In the second decision, the Tenant was awarded \$565.00 for harassment and the Landlord banging on the door and yelling at the Tenant.

The Tenant submitted photos of medication and documentation supporting his position that he experienced stress and mental health issues in December of 2016 and January of 2017.

The Tenant submitted a photo of the notice from the Landlord stating she would do an inspection tomorrow, December 20th. I understand this to relate to the video in which the Landlord enters with two individuals on December 13th.

The Tenant submitted a video from December 12th showing the Landlord, plumber and third party entering to inspect the unit and look at the sink.

The Tenant submitted a video from December 13th showing the Landlord and two others entering the unit pursuant to the notice stating the Landlord would enter tomorrow, December 20th. The Landlord and two others refuse to leave despite being asked to do so repeatedly. The police end up attending. The Landlord states that she can enter because there is a plumbing issue and says there is water dripping on the floor.

At the first hearing, the Landlord testified about issues relevant to the return of the security deposit. During that she mentioned being scared of the Tenant. She alleged the Tenant assaulted her. She spoke about her loss of quiet enjoyment and peace. None of the remaining testimony is relevant to the issue before me in this decision.

The Landlord did not submit any evidence for this hearing.

I have reviewed the decisions from the previous files. I note that the first dispute was heard September 16, 2016 and September 23, 2016. The Tenant raised the issue of loss of quiet enjoyment based on the water being shut off, dog barking and loss of internet.

The second dispute was heard December 1, 2016. The Tenant raised the issue of the Landlord banging and stomping above him as well as the washing machine issue. The Tenant's claim was dismissed. The washing machine issue was dismissed with leave to re-apply.

Analysis

Section 7(1) of the *Act* states that a party that does not comply with the *Act* must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Policy Guideline 16 also states:

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- loss of access to any part of the residential property provided under a tenancy agreement;
- loss of a service or facility provided under a tenancy agreement;
- loss of quiet enjoyment (see Policy Guideline 6);
- loss of rental income that was to be received under a tenancy agreement and costs associated; and
- damage to a person, including both physical and mental.

Pursuant to section 28 of the *Act*, the Tenant was entitled to quiet enjoyment throughout the tenancy. Policy Guideline 6 outlines the entitlement to quiet enjoyment.

This tenancy ended January 1, 2017. I will not consider issues that arose prior to the last hearing between the parties on December 1, 2016. It is clear the Tenant raised issues related to loss of quiet enjoyment in both prior hearings. If there were additional issues related to loss of quiet enjoyment, the Tenant should have raised those during the previous hearings. I will consider loss of quiet enjoyment for the one-month period between December 1, 2016 and January 1, 2017.

I decline to award compensation for loss of the shed. This occurred for the last month of the tenancy. There was no written agreement that the Tenant would have access to the shed or use of the shed. The Tenant did not have anything in it when the locks were changed. I do not accept that the Tenant suffered any loss or damage because of the Landlord changing the lock on the shed.

Based on the undisputed testimony of the Tenant, I accept that the Landlord contacted his references near the end of the tenancy. I accept that this contributed to the overall breach of section 28 of the *Act* given when it was done. I accept that the Landlord did not have a valid basis for contacting references at the end of the tenancy. I accept that this caused the Tenant stress.

I do not accept that the Landlord going through garbage is a breach of privacy. Garbage, by its very nature, is not private. It is discarded items that the Tenant has relinquished control over. I decline to award the Tenant compensation for this.

Based on the undisputed testimony of the Tenant, I accept that the Landlord filmed him. I accept that this is a violation of privacy and a breach of section 28 of the *Act*. I accept that this contributed to the stress the Tenant experienced in relation to this tenancy.

I accept the undisputed testimony of the Tenant in relation to the washing machine. I accept that the Landlord was aware of the issue given it was raised in a prior arbitration and given she mentions it on one of the videos. I accept that the Landlord should have had this repaired and breached the *Act* by failing to do so. I accept that the Tenant lost use of the washing machine as a result.

Based on the undisputed testimony of the Tenant, I accept that the Landlord failed to provide a contact person for repair issues and refused to answer her door. I accept that this is a breach of section 33(2) of the *Act*. Based on the undisputed testimony of the Tenant, I accept that there may have been times in December when this caused issues for the Tenant when the water was shut off. I accept that this contributed to the stress experienced by the Tenant in relation to this tenancy.

Based on the undisputed testimony of the Tenant, and video evidence, I accept that the Landlord entered the unit on December 12th and December 13th. Based on the undisputed

testimony of the Tenant, photo evidence and video evidence, I accept that the Landlord gave an incorrect notice to enter the rental unit on December 13th. I am satisfied the notice did not strictly comply with section 29 of the *Act* given the discrepancy in the dates. I accept that the Landlord entered despite a note on the door indicating she was not to do so. I accept that the entry was not for an emergency. I am satisfied the Landlord breached section 29 of the *Act*. I accept that this contributed to the stress experienced by the Tenant in relation to this tenancy.

Based on the undisputed testimony of the Tenant, I accept that the Landlord made noise that was unreasonable and disturbed the Tenant. I also accept that the Landlord allowed her dog to bark at night thus disturbing the Tenant. I accept that this was not reasonable given the dog was left in the room above the Tenant. I accept that the Landlord breached section 28 of the *Act*. I accept that this contributed to the stress experienced by the Tenant in relation to this tenancy.

I accept the undisputed testimony of the Tenant that the issues raised caused him stress and affected his mental health. This is supported by the photos and documentation submitted.

I accept the undisputed testimony of the Tenant that he attempted to minimize his loss by trying to vacate earlier, staying with friends and leaving prior to the actual end of the tenancy. I also note the Tenant raised these issues at two prior arbitrations thus bringing them to the attention of the Landlord and attempting to resolve them.

In the circumstances, I accept that the Landlord breached the *Act* as noted above. I accept that the Tenant experienced loss or damage in the form of stress and mental health issues as a result of these breaches. I also accept the Tenant lost use of the washing machine. I accept the Tenant took reasonable steps to minimize his loss.

In relation to the amount claimed, the Tenant said it is 43% of his rent for the last two months of the tenancy. As explained, I have only considered these issues as they relate to the last month of the tenancy. Therefore, I award the Tenant half the amount requested being \$350.00. I find this to be a reasonable amount considering the amount of the monthly rent and the nature of the issues raised. I accept that the tenancy was stressful; however, also note that the Tenant was still able to use the space other than the washing machine. Further, I have not accepted that the Landlord breached the *Act* in all of the ways submitted by the Tenant.

Given the Tenant was successful in this application, I award him reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Conclusion

The Tenant is entitled to compensation in the amount of \$450.00. The Tenant is issued a monetary order in this amount. This Order must be served on the Landlord and, if the Landlord

does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order 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 *Act*.

Dated: February 06, 2019

Residential Tenancy Branch