



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, MNDC, OLC, OPT, RP, RR, PSF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order of possession of the rental unit pursuant to section 54;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

The tenant and her advocate attended the hearing via conference call. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package by placing it under the shared doorway between the rental unit and the landlord's residence on December 21, 2018. The tenant also stated that the landlord was served with all of the submitted documentary evidence via regular post mail on January 16, 2019. I accept the undisputed affirmed testimony of the tenant and find that the landlord was sufficiently served and is deemed served as per section 90 of the Act.

Preliminary Issue(s)

At the outset it was clarified with the tenant and her advocate that the tenant's request for an order of possession was not necessary as the tenant does have possession and occupies the rental space. As such, this portion of the tenant's application was cancelled by the tenant. No further action is required.

The tenant's request for an order for the landlord to comply with the Act, regulations or tenancy agreement was also addressed. The tenant requested a finding requiring the landlord, if seeking an end to the tenancy to serve the tenant with a notice to end tenancy under the applicable section of the Act. The tenant stated that this issue was addressed in the previous decision in a dispute resolution hearing, but the landlord persists in non-compliance. I note for the record that the Act does require that the landlord must give proper notice to tenants if they plan to end a tenancy. There are different notice forms required for different situations. By law, tenants must always be given the right amount of notice. I caution the landlord that if these actions persist, the tenant may have cause to file an application for monetary compensation for the loss of quiet enjoyment through the landlord's actions in failing to comply with the Act. No further action is required at this time for this portion of the tenant's application.

The remaining issues listed below were addressed in the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss?

Is the tenant entitled to an order for the landlord to allow access to the unit or site?

Is the tenant entitled to an order for the landlord to provide services or facilities agreed upon but not provided?

Is the tenant entitled to an order for repairs?

Is the tenant entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant requests an order for the landlord to stop “locking her out”. The tenant describes a sliding lock that the landlord uses to secure the common access door to the rental unit for which the tenant then has no access to enter the rental space.

The tenant seeks a request to have the landlord make repairs to the rental unit and maintain the rental premises which are:

- Repair basement common area lights
- Clear driveway/pathway of ice/snow
- Repair broken step on back steps
- Unclog the drains
- Remove and Empty Recycling bin
- General cleaning of common areas

The tenant stated that the landlord has failed to maintain the rental property as per the submitted list listed above. The tenant provided undisputed affirmed evidence that the landlord has been repeatedly notified of these issues, but the landlord has chosen to not comply. The tenant stated that the landlord has failed to perform general cleaning in the common areas for the last 2 years. The tenant stated that the landlord’s non-compliance in removing the recycling is negligent and causing a bug infestation.

The tenant seeks a reduction in rent of \$200.00 as the landlord is not providing proper services/facilities, specifically a stable room temperature for the heating as it is frequently too high. The tenant also stated that the landlord turns off the heat at night when it is cold and that there is a lack of hot water. The tenant further argues that the temperature is erratic and unpredictable and that the landlord has been numerous notified of this issue. The tenant stated that the landlord has taken no action. The tenant stated that the amount for the rent reduction was an “arbitrary amount” not based on any actual losses. The tenant also seeks as part of the rent reduction request that the landlord install a separate thermostat in the rental unit.

The tenant seeks a monetary claim of \$4,470.00 which consists of:

\$2,640.00	Compensation, Loss of Quiet Enjoyment, \$110.00/month @ 24 months (September 2016 to August 2018)
\$880.00	Compensation, Loss of Quiet Enjoyment, \$220.00/month @ 4 months (September 2018 to December 2018)
\$700.00	Compensation, Aggravated Damages, unlawful entry

\$250.00

Compensation, Losses for excessive heat

The tenant is seeking compensation for the loss of quiet enjoyment due to the landlord's failure to comply with the Act, aggravated damages for unlawful entry and losses due to excessive heat.

The tenant has claimed that a loss of quiet enjoyment of the rental unit has occurred due to the landlord's failure to comply with the Act by maintaining the rental unit as required under the Act for the entire term of the tenancy agreement since September 2016. The tenant stated that the compensation requested was an arbitrary amount not based on any actual losses. No details of how the amounts sought were calculated.

The tenant has made a claim for aggravated damages of \$700.00 for an unlawful entry based upon one instance and that the amount sought was an arbitrary amount not based on any actual losses incurred.

The tenant has made a claim for \$250.00 for losses due to excessive heat. The tenant claims that her telephone has issues and her make-up has been ruined due to excessive humidity and heat. The tenant did not provide any details on the calculation of the \$250.00 amount claimed nor did the tenant provide sufficient evidence that her telephone or her make-up was damaged due to humidity and heat.

Analysis

In the tenant's request for access to and from the rental unit, I accept the undisputed affirmed evidence of the tenant that the landlord "locks" the tenant's access by using a sliding lock to secure the common access door which prevents the tenant entry into the rental premises.

There are two key sections in the Act that deal with the tenant's right to enter and exit his or her rental unit.

Section 31 of the Act, purports to deal with lock or other access to residential property or the rental unit:

31 (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

- (1.1) A landlord must not change locks or other means of access to a rental unit unless
- (a) the tenant agrees to the change, and
 - (b) the landlord provides the tenant with new keys or other means of access to the rental unit....

Section 30(1) of the Act protects a tenant's right to access to the residential property:

- 30(1) A landlord must not unreasonably restrict access to residential property by
- (a) the tenant of a rental unit that is part of the residential property, or
 - (b) a person permitted on the residential property by that tenant.

As such, I order the landlord to stop using the sliding lock. Failure to comply could result in the landlord facing a monetary compensation request by the tenant for loss of use of the rental premises.

Section 32 of the Act states in part that a landlord must provide and maintain the residential property in state of decoration and repair that complies with health, safety and housing standards required by law. As such, I accept the undisputed evidence of the tenant and find that the landlord must comply with the Act. I order the landlord to repair the common area lights; clean and maintain the common areas of the rental premises; provide maintenance and care to the driveway/pathways and back steps for safe access to the rental property; have maintenance performed to unclog the drain; and remove recycling left in the recycling bin. Failure to comply could result in the landlord facing a monetary compensation request by the tenant for loss of quiet enjoyment of the rental premises.

For the tenant's request for a rent reduction of \$200.00 based upon the specific request of having a stable temperature and the installation of a separate thermostat control in the rental unit, I accept the tenant's undisputed evidence that the landlord was notified and has taken no action. As such, I order that the landlord have a certified technician inspect the heating of the rental premises to determine the cause of the erratic temperature changes by March 1, 2019 and make the appropriate repairs by March 15, 2019. At this time, I find that it is unnecessary to have a separate thermostat control installed as there has been insufficient evidence provided to determine its necessity. The tenant is free to re-apply in the future if it can be found that such an installation is required. I also order that the tenant may withhold rent of \$50.00 per month if the landlord fails to have the heating system inspected by March 1, 2019 and repaired by March 15, 2019. The \$50.00 per month rent reduction shall continue until the landlord complies with this order. If there is a dispute over the completion of any necessary

repairs, the landlord is to file an application for dispute with the Residential Tenancy Branch for a finding if this order has been complied with.

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 tenant is seeking compensation totaling, \$4,470.00 for loss of quiet enjoyment, aggravated damages and loss of use of personal property. I accept the undisputed affirmed testimony of the tenant, but find that the tenant has failed to provide sufficient evidence detailing a loss of quiet enjoyment, aggravated damages and loss of use. The tenant provided details that the amounts sought are “arbitrary amounts” and not based upon any actual losses nor has the tenant provided sufficient details of how the amounts were calculated. On this basis, the tenant’s monetary claim is dismissed.

Conclusion

The tenant’s application issues for repairs, to provide services or facilities and a rent reduction have been granted as detailed above. The tenant’s remaining application issues are dismissed.

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: February 6, 2019

Residential Tenancy Branch