



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RR, FF

Introduction

This hearing dealt with an application by the tenant for the following orders:

- A monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement;
- An order that the landlord comply with the Act, regulation or tenancy agreement;
- An order allowing the tenant to reduce the rent for repairs, facilities agreed upon but not provided; and
- An order that the tenant recover the filing fee from the landlord for the cost of this application.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

The tenant had initially made application for a monetary order in the amount of \$12,000.00 and then on January 04, 2019, amended the amount of the monetary claim to \$20,000.00. The tenant agreed that he had been served with the amended application.

During the hearing, while referring to the tenant's monetary claim worksheet the landlord informed me that that piece of evidence was not before him. The tenant stated that he had served all his evidence on the landlord on January 04, 2019. Upon taking a closer look at the document, I found that it was created on January 11, 2019 and therefore could not have been served on the landlord prior to this date.

The landlord agreed that he was aware of the amended amount of the tenant's monetary claim and therefore I allowed the monetary worksheet into evidence as it was simply a breakdown of the amount of the claim. The tenant agreed that he had received other evidence regarding the tenant's amended monetary claim.

These parties have been involved in several disputes which have resulted in multiple applications for dispute resolution by both parties. Prior to this hearing, there have been at least 9 hearings since July 2018. There are three more scheduled to hear the tenant's applications on February 25, 2019, April 09, 2019 and April 16, 2019.

Evidence that was uploaded to the Residential Tenancy Branch electronic filing system, five days or less prior to the hearing and evidence filed and relied upon at the previous hearings mentioned above has not been considered in the making of this decision.

Both parties provided extensive documentary evidence. All parties' testimonies, and evidence have been considered in the making of this decision. As this matter was conducted over 83 minutes of hearing time, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be Decided

Did the tenant suffer a loss of quiet enjoyment? Is the tenant entitled to compensation? Is the tenant entitled to the other remedies that he has applied for? Did the landlord act in a responsible manner?

Background and Evidence

The parties agreed that the tenancy started in December 2012. The monthly rent is \$1,362.00 and includes utilities. No security deposit was paid or collected. As mentioned above, the tenant has made multiple monetary claims against the landlord and has been awarded a rent reduction which lowered his rent to \$770.00 effective February 01, 2019. This current new rent is a little over half the rental amount as per the tenancy agreement.

The rental unit is on the ground floor of the landlord's house and includes two bedrooms. The tenant uses one of the bedrooms as a storage room. The landlord and his daughter reside in the upper portion of the house.

The tenant's main claim for monetary compensation stems from an alleged assault by the landlord. The landlord stated that on December 31, 2018, the tenant had a contractor visit the rental unit with sheets of plywood. Shortly after the arrival of the contractor, the landlord heard what sounded like holes being drilled into the wall. The landlord entered the rental unit through the open door and found the tenant in the process of reinforcing the walls with plywood. The tenant agreed that he did not ask the landlord for permission to make alterations but stated that he had informed the landlord of his intentions to do so.

The tenant filed a copy of an email to the landlord informing him "*my handy men will close off any opening you create with twice as much strength as the dry wall*". This email contained accusations and threats of legal action against the landlord.

The landlord stated that he asked the tenant to stop the work and the tenant did not pay heed to him and continued to drill holes in the wall. The landlord stated that in order to protect his property, he attempted to pull the tenant away from the wall and the tenant called the police. The tenant stated that the landlord struck him with a "*karate*" type blow to the back of the head.

The police attended the rental unit. The police report was unavailable at the time of the hearing. However, the landlord did file into evidence a copy of an email from the attending police constable. The email corroborates the landlord's version of events and states that the landlord was simply protecting his property after the tenant refused to cease causing damage. The constable's email also states

We didn't go for charges as you used physical force to stop Z from damaging your property, the force was not excessive and your intention were not to hurt Z but to stop him from drilling holes in your walls. We are aware of Z's tendencies to record every conversation and put them on the internet

The tenant has made 3 separate monetary claims related to this alleged assault for a total of \$15,038.00. When I asked the tenant to present his claim he was more intent on trying to discredit the landlord than focus on his application. The tenant referred to past hearings multiple times and reminded the landlord of the number of times that he had won his case when he disputed the landlord's notices to end tenancy.

I asked the tenant to explain the breakdown of his claim and he refused to do so saying that it was too much to go over and that I would have to find the answers that I was seeking in the evidentiary documents that he had filed.

I have reviewed the documentation filed into evidence by both parties. The tenant's evidence consisted mainly of slideshow videos. The slide shows presented documents with moving blurbs that covered parts of the documents and made it very difficult to read. In addition, the slide shows were set to move at a high speed which made some slides impossible to read without pausing the slide show. The huge volume of evidence mostly consisted of such slide shows.

The slides that are related to the alleged assault show photographs of the parties and one more individual. The evidence indicates that sheets of plywood were being attached to the walls by the tenant and his contractor.

The tenant stated that he installed a security system and has claimed a rent reduction of \$220.00 per month, for the cost of surveillance. The tenant explained that he has multiple systems set up at a substantial cost to him. When asked to explain why he believed that the landlord was responsible for the cost of surveillance and/or the equipment, the tenant declined to present his evidence and relied on me to review his documentary evidence to obtain answers to specific questions. The tenant did not clarify whether his claim was for the cost of the equipment or for the cost of surveillance.

To support his claim for the cost of security cameras and/or surveillance, the tenant has filed receipts for the purchase of cell phones, cameras, battery packs, adaptors etc. The tenant has also filed a copy of his cell phone bill for the period of December 14, 2018 to January 13, 2019 in the amount of \$220.25 which is the amount he is claiming in his application, as a monthly rent reduction. The tenant declined to explain the reason why he believes that the landlord is responsible for the cost of his cell phone use.

The tenant stated that the landlord cut off the electric supply to the stove but was not sure exactly when it was done. Upon review of the tenant's evidence, he has filed photographs dated December 31, 2018 to show that there was no electric supply to the stove on that date. The landlord provided information that the electric supply to the stove was cut off sometime in late November.

When asked if the stove had electric power at the time of the hearing, the tenant stated that he did not know. The tenant physically walked up to his stove to check if the stove was ready for use and replied that it was. I asked the tenant the date the electric supply to the stove was restored and the tenant stated that he did not know because he does not use the stove.

The tenant has claimed a rent reduction in the amount of \$310.00 for the loss of the use of the stove. The tenant has filed copies of receipts for groceries, juice bars and restaurants to support his claim.

The tenant is also claiming a rent reduction of \$150.00 per month for “*consequential future expenses*”. The tenant stated that since the alleged blow to the head by the landlord, he is not able to multitask and suffers from memory loss. The tenant did not file evidence by way of a doctor’s note that documented the presence and/or cause of his medical issues. The landlord informed me that the tenant had made such a claim in one of his past applications and it was denied.

The tenant has also made a monetary claim of \$4,500.00 for loss of quiet enjoyment. The tenant refused to present a breakdown of his claim or to explain how he had arrived at the dollar amount of 4,500.00. Upon review of the tenant’s evidence, I found that the tenant has referred to outcomes of previous hearings and has also provided copies of emails written to the landlord which threaten further legal action and taunt the landlord about how many disputes he has lost.

The landlord filed evidence of his own and presented it during the hearing. He testified that the tenant has written multiple letters of complaint to the local city municipality, to the mayor, to the local newspaper and even to the landlord’s mortgage company. The landlord stated that these emails are slanderous and accuse him of being a baseball bat wielding landlord who enters the rental unit without permission, who makes false accusations against the tenant and who makes multiple attempts to evict the tenant.

The landlord also filed information regarding postings by the tenant on social media. These postings refer to the landlord as:

Scofflaw, going bankrupt, lying, deceitful, vandalizes property, threatens to kill tenant with use of chemicals and has lost five disputes in 60 days.

The landlord filed 14 police reports which resulted from visits to the rental unit. The calls were mostly made by the tenant reporting the landlord for noise disturbances. Most reports indicate that no action was taken by the police as it was not necessary

The landlord stated that the tenant continues to harass him with monetary claims and copious amounts of evidence prior to each of the hearings. The landlord stated that most of the evidence is repetitive and relates to matters that have been dealt with in past hearings.

The landlord also stated that the tenant continues to contact his lawyer with materials and phone calls despite the landlord having informed him not to. This results in legal

bills to landlord in excess of \$1,000.00 per month. The landlord filed a copy of the lawyer's invoice for the month of December 2018 in the amount of \$1,209.60 for services related to processing calls and emails from the tenant.

At the end of the hearing the landlord stated that the tenant's behavior adversely affected his health and filed a doctor's note to support his testimony. The landlord stated that his adult daughter would like to move into the lower level and offered the tenant money to move out. The tenant replied that he was not going to because rents in the area are far more than what he is paying.

Analysis

With respect to the tenant's reliance on previous decisions to support his arguments, I find it important to note that I am not bound by or obligated to follow any past decisions. This decision is based upon consideration of the evidence before me. The tenant refused to present his evidence and therefore most of this decision is based on my interpretation of the tenant's evidence before me. As stated earlier in this decision, most of the tenant's evidence was difficult to read and was repetitive.

In addition, any documents filed into evidence five days or less prior to this hearing have not been considered in the making of this decision. Issues addressed in prior hearings are res judicata and accordingly dismissed.

Based on the oral testimony of both parties, I find that the relationship between these two parties is an acrimonious one. In addition to today's hearing, there is one more on February 25, 2019 and two more disputes to be heard in April 2019. The parties have been involved in numerous hearings with one another on the following dates.

July 4, 2018

August 21, 2018

August 28, 2018

August 30, 2018

September 14

October 18, 2018

December 13, 2018

December 28, 2018

January 29, 2019

The parties have also made multiple 911 calls. Judging from the number of constable business cards and police reports filed into evidence there have been at least 14 visits

by police since July 2018. Most calls were initiated by the tenant making noise complaints against the landlord.

The tenant's claims are as follows:

1.	Compensatory damages	\$4,538.00
2.	Aggravated damages	\$7,500.00
3.	Aggravated damages for trespass to assault	\$3,000.00
4.	Loss of quiet enjoyment	\$4,500.00
5.	Monthly expenses for security	\$220.00
6.	Monthly rent reduction for stove loss	\$310.00
7.	Monthly consequential future expenses	\$150.00
8.	Filing fee	\$100.00
	Total	\$20,318.00

1. Compensatory damages - \$4,538.00

This claim is related to the alleged assault that took place on December 31, 2018, during the interaction between the parties. The parties offered different versions of what took place. The tenant stated that the landlord gave him a '*karate style*' blow to the back of his head while the landlord denied the allegation and stated that he simply attempted to pull the landlord away from the wall he was damaging.

The photographs and testimony clearly indicate that the tenant was making alterations to the rental unit. Upon review of the tenant's email to the landlord he had merely informed the landlord of the alterations and had not sought or obtained the permission of the landlord to make the alterations to the wall inside the rental unit.

The tenant did not provide any independent evidence to support his version of the incident. His version is disputed by the landlord. I have no basis for favoring one version over the other. However, the landlord filed an email from the attending constable which corroborates the landlord's version of what happened.

On a balance of probabilities and based on the email from the constable, I find that it is more likely than not that the landlord did not assault the tenant nor did the landlord strike the tenant with a '*karate style*' blow to the head.

The constable states in his email that the landlord was protecting his property when he attempted to pull the tenant away from the wall that the tenant was damaging.

Therefore, I dismiss the tenant's claim for compensatory damages.

2. Aggravated damages - \$7,500.00
3. Aggravated damages for trespass to assault - \$3,000.00

Aggravated damages may be awarded where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. As provided in Residential Tenancy Branch Policy Guideline 16:

Compensation for Damage or Loss:

“Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.”

When asked to present the breakdown of his claim and explain how he arrived at the dollar amount that he seeks, the tenant informed me that it is all in his evidence and that he was not prepared to present it.

The tenant is claiming compensation for aggravated damages for the alleged assault. With respect to the tenant's claim for aggravated damages I find that the tenant did not sufficiently prove that an assault took place or that he suffered a loss or damages. Therefore, I find that an award for aggravated damages which is damage or loss with respect to property, money or services must be dismissed.

4. Loss of quiet enjoyment - \$4,500.00

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant must show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. Such interference might include intentionally removing or restricting services to the tenant.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed.

Rule 2.5 of the *Rules of Procedure* addresses documents that must be submitted with an Application for Dispute Resolution. To the extent possible, the applicant should submit a detailed calculation of any monetary claim being made. In this case the tenant did not provide a detailed calculation to support his monetary claim of \$4,500.00. In

addition, the tenant declined to present his evidence and instructed me to find answers to my questions in the documents that he filed into evidence.

Also, it would appear unclear as to whether the tenant is seeking further compensation for something already sought in another part of his claim or in one of the prior applications he made for monetary orders. To illustrate, the tenant requested rent reductions for the cost of security monitoring, for the loss of the use of the stove and for future expenses but has also requested compensation for “devaluation of tenancy” in this section. The tenant has also been awarded compensation, in a prior application, for the loss of electric outlets by way of a substantial rent reduction but is seeking the same in this application as well.

Also, loss of quiet enjoyment, which may include retaliatory conduct, is payable where a landlord breaches section 28 of the Act

Protection of tenant's right to quiet enjoyment

28 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.

Based on the digital evidence of the tenant and the limited oral testimony of the tenant related to loss of quiet enjoyment, I find that much of the tenants’ documentation was irrelevant or not pertinent to the monetary claim but an illustration of the poor relationship that he and the landlord have.

The items in the tenant’s application are inter related in that he is seeking a monetary order for the loss of quiet enjoyment and a rent reduction because of those issues. I also note that the tenant made an application for compensation for the loss of quiet enjoyment on November 28, 2018. This matter was heard on January 29, 2019 and his application was dismissed. The tenant made this application for compensation for the loss of quiet enjoyment on December 04, 2018 which is just six days later. Since the tenant refused to present his evidence, it suggests that on a balance of probabilities it is

more likely than not that this claim is similar if not the same as the one made six days earlier and accordingly will be *res judicata*.

Black's Law Dictionary defines *res judicata*, in part as follows:

Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

Based on the above, I find that the tenant's claim of \$4,500.00 for loss of quiet enjoyment has already been dealt with in the previous hearing which took place just two days before this one and therefore must be dismissed.

5. Monthly expenses for security - \$220.00
6. Monthly rent reduction for stove loss - \$310.00
7. Monthly consequential future expenses - \$150.00

Claims #5, #6, and #7 are claims for monthly rent reductions.

On January 29, 2019, just two days prior to this hearing, the parties attended a hearing to address the tenant' application. Below is an excerpt from the decision dated January 29, 2019:

The tenant testified that because those security lights were damaged he was so distressed that he sold his electric motorbike at a significant discount. The tenant seeks \$100.00 for each incident that the landlord cut off his electricity; \$5.00 dollars a day rent reduction for loss of quiet enjoyment, \$4.00 per day for each day that the landlord discontinues power to the deck outlets, \$1250.00 payment or rent reduction for the discount sale of his motorbike, a onetime cash payment of \$195.00 for the destruction of the security lights and \$1500.00 aggravated damages "so that he won't try this again", and the recovery of the \$100.00 filing fee for this application.

In that hearing on January 29, 2019, the tenant was seeking compensation for loss of quiet enjoyment, aggravated damages and compensation related to the loss of his security lights. In this application the tenant has made similar claims for the same items. The tenant has filed a copy of his cell phone bill for the month of December 2018, in the amount of \$220.25. The tenant also filed proof of the purchase of cell phones, cameras, battery packs, adaptors etc.

The tenant made a claim for the cost of these items in the previous hearing. This claim was discussed and, in a decision, dated January 29, 2019, the tenant's claim for damages was dismissed. In this application the tenant is seeking a monthly rent reduction in the amount of \$220.00 which he testified is to recover the cost of the items mentioned above. It is not clear whether the tenant is claiming a rent reduction of \$220.00 for the cost of items purchased or for the cost of surveillance.

To support his claim for a rent reduction of \$220.00, the tenant filed a copy of his cell phone bill which is in the amount of \$220.25. The tenant did not explain why he believes that the landlord is responsible for his personal phone bill. The tenant's application for a rent reduction in the amount of his cell phone bill is dismissed.

The tenant has also requested a rent reduction for the loss of the use of the stove due to the power to the stove being shut off. As per a decision dated October 29, 2018 the tenant was awarded a \$457.00 rent reduction due to power to electrical outlets being shut off. This rent reduction is currently in place. The following is an excerpt from the decision from a hearing that was conducted on October 18, 2018:

*I am satisfied that the Tenant is entitled to a rent reduction in the amount of **\$457.00** per month. Therefore, rent as of November 1, 2018 will be established at **\$800.00** per month going forward. If the Landlord elects to restore the full use of the washing machine and electrical outlet, the rent reduction will no longer apply and rent will return to a monthly amount of **\$1,257.00**;*

Based on the above, I find that the tenant has already been granted a hefty rent reduction but is seeking an additional rent reduction for the same issue. In addition, the tenant confirmed that he has electric supply to the stove and therefore I dismiss his application for an additional rent reduction.

The landlord is reminded that if the use of the washing machine and other electrical outlets is restored, he may make application to have rent returned to \$1,257.00. The tenant has also applied for a monthly rent reduction of \$150.00 in anticipation of "consequential future expenses". The tenant stated that since the alleged blow to the head by the landlord, he is not able to multitask and suffers from memory loss. The tenant declined to provide further information on his alleged memory loss and other medical problems resulting from the alleged assault. The tenant also declined to explain how he determined the amount of the rent reduction he was seeking.

The landlord informed me that the tenant had made such a claim in one of his past applications and it was denied. Since some of the tenant's claims in this application have been made in previous disputes, I accept the landlord's testimony with regard to the tenant's claim for future expenses. It is also impossible to determine expenses that may or may not occur in the future and therefore the tenant's claim for a rent reduction for future expenses is dismissed.

Despite having been granted multiple rent reductions in past decisions, the tenant has made a claim for additional rent reductions in the total amount of \$680.00, which if granted would take his rent down to \$90.00 per month. I find that the tenant's claims are unreasonable, and he continues to pursue monetary claims in multiple applications against the landlord.

Based on the testimony of both parties it is clear that the relationship between these parties has deteriorated to the point that the parties are retaliating against the other to some extent. Since the tenancy is still in effect at this time, with a view to future disputes, I strongly encourage the parties to conduct themselves in a manner that complies with the Act and in a manner that fosters a more cohesive tenancy relationship which includes ceasing actions that are intended to aggravate the other party.

Examples of these actions include:

- contacting the landlord's lawyer by phone or with copious amounts of emails which results in legal bills to the landlord in excess of \$1,000.00 per month,
- attacking and slandering each other on social media,
- contacting the landlord's mortgage company,
- misusing police time,
- making unreasonable monetary claims,
- damaging the rental unit or making changes without prior approval from the landlord

I suggest that the parties agreed to exercise goodwill and a spirit of cooperation, which is required to achieve a positive landlord – tenant relationship.

Since the tenant has not proven any of his monetary claims, he must bear the cost of filing his own application.

Conclusion

The tenant's application is dismissed in its entirety.

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 19, 2019

Residential Tenancy Branch