



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR ERP LRE MNDCT MNRT OPT RR

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order of possession for the tenant pursuant to section 54; and
- authorization to reduce rent for this tenancy pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Landlord's counsel PV (the "landlord") primarily spoke on behalf of the landlord. The tenant gave evidence for herself.

As both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. The tenant confirmed receipt of the landlord's evidentiary materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Jurisdiction

There was a previous hearing on November 15, 2018 under one of the file numbers on the first page of this decision. The parties entered a settlement as a result of that hearing and an Order of Possession in the landlord's favour was issued.

While the tenant has applied to dispute a 10 Day Notice in their present application the parties testified that no 10 Day Notice was issued. The tenant was served with the Order of Possession issued on November 15, 2018.

The principle of *res judicata* prevents an applicant from pursuing a claim that has already been conclusively decided. I find that the portions of the tenant's present application dealing with cancellation of a 10 Day Notice and Order of Possession relates to a matter that has already been conclusively determined by another arbitrator in an earlier hearing. As such, I find that I have no jurisdiction to make a finding on the issues relating to an Order of Possession or Notice to End Tenancy and dismiss those portions of the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed? Is the tenant entitled to reduce the rent for this tenancy?

Should the landlord be ordered to make emergency repairs to the rental unit?

Should restrictions be placed on the landlord's right to enter the rental unit?

Background and Evidence

This periodic tenancy began in 2017. There is no written tenancy agreement. The tenant characterizes the relationship with the landlord as consisting of constant intimidation, harassment and abuse. The tenant submits that the landlord has damaged personal possessions, threatened the life of pets, acted in an aggressive and hostile manner and has failed to perform repairs when requested. The tenant submitted photos, written submissions and video recordings in support of their application.

The tenant suggests that a monetary award in the amount of \$12,001.00 is appropriate for the impact the landlord has had on the tenant's mental and physical health. The

tenant said that the rental suite is suffused with mold which the landlord has failed to resolve. The tenant submits that she suffers from “a plethora of fungal/mold related ailments, sinus infection, headaches, chronic fatigue, etc., with 18+ yrs. Of painful, pre-existing, debilitating conditions”.

The tenant submits that the history of litigation between the parties is evidence of the adversarial relationship and the landlord’s consistent harassment. In their written submissions the tenant says:

I am, more than, due monetary compensation in the amount of \$12,000.00, for the Landlords’ Breach of Contract, aggravated damages, damage to my property, neglect of his responsibility, threats, abuse of his position of power, stalking, terrorism, the resulting stress & consumption of my time & efforts, with no choice, other than be forced repeatedly, to defend myself from an unconscionable, unrelenting bully.

The landlord disputes the tenant’s evidence and denies that there is any evidentiary basis for a monetary award or the other relief the tenant seeks.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

Residential Tenancy Procedure Rule of Procedure 6.6 provides that the onus is on the person making the claim to prove their claim on a balance of probabilities. Based on the evidence of the parties, I find that the tenant has not met their evidentiary burden for their claims.

The tenant’s evidence consists primarily of subjective descriptions of the relationship with the landlord. I find that the documentary evidence consisting of some photographs and videos to be insufficient to show that there has been any harassment by the

landlord or that any damages or loss resulted from their relationship. I find the tenant's description of the harassment she alleges to be hyperbolic and not supported in the documentary evidence. The tenant said that they have failed to obtain the police records but I find that police reports can be filed by any party and would not be evidence of a breach by the landlord in any event.

I find that the tenant has not met their evidentiary burden for any portion of their application. I find the tenant's testimony and submissions to be exaggerated and not supported in the documentary evidence. The tenant's characterization of the landlord is so wholly out of proportion with what would be reasonable as to be unbelievable. Furthermore, the tenant has not provided any evidence showing to demonstrate that they have suffered damages or loss at all, much less in the amount that they claim.

For these reasons, I dismiss the tenant's application without leave to reapply.

Conclusion

I decline to make a finding on the portions of the application dealing with an Order of Possession and Notice to End Tenancy as I have no jurisdiction.

The balance of the tenant's application is dismissed 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 *Residential Tenancy Act*.

Dated: February 14, 2019

Residential Tenancy Branch