



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR MNDCT PSF

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 "**Notice**") pursuant to section 46;
- an order requiring the landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 27; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:10 am in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 am. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified that the landlord was served the notice of dispute resolution package via registered mail on January 10, 2019. The tenant provided a Canada Post registered mail tracking number to confirm this mailing, which is written on the front cover of this decision. I find that the landlord was deemed served with this package on January 15, 2019, five days after the tenant mailed it, in accordance with sections 89 and 90 of the Act.

Issues to be Decided

Is the tenant entitled to:

- the cancellation of the Notice;
- an order requiring the landlord to provide services or facilities required by the tenancy agreement or law; and
- a monetary order for compensation for damage or loss?

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenant, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The parties entered into an oral tenancy agreement for the tenant to rent the upper floor of a single detached house starting September 15, 2014. Monthly rent is \$400.00. The tenant provided a \$200.00 security deposit. The tenant continues to reside in the rental unit.

The tenant submitted into evidence a copy of a Shelter Information form, which states that utilities are included in the monthly rent and that two other occupants share the rental unit with the tenant.

The rental unit is located on the same parcel of land as the single detached home that the landlord occupies. The tenant testified that all the utilities are in his name.

The Notice

The landlord served the Notice dated December 27, 2018 on the tenant on December 27, 2018, by giving a copy to the tenant's son. The tenant testified that she was not home when this occurred, but was given the Notice by her son on December 29, 2018. She did not testify as to whether her son resides at the rental unit or how old her son is.

The tenant provided a copy of a proof of service of the Notice dated December 27, 2018, which provides conflicting statements. It states that the Notice was hand delivered on December 24, 2018 to "an adult" in the section of the Proof of Service form used when the Notice is served on a person who lives with the tenant (I note that the field which confirms this individual lives with the tenant is left blank). The Proof of Service

form also contains a witness statement which says that the tenant herself was personally served on December 27, 2018. As the landlord was not present at the hearing, he could not provide testimony to clarify this discrepancy.

The Notice had an effective date of December 27, 2018 and stated that the tenant owed \$14,400.00 in rent, due December 27, 2018.

The tenant denied that any rent was owed to the landlord. She testified that she pays the landlord rent on the first of every month, in cash, and that the landlord does not provide her with receipts, even though she requests them.

Utilities

The tenant testified that she has been without running water in the rental unit since April 3, 2016 and that she has been without electricity in the rental unit since September 2, 2017. She testified that the landlord had these utilities shut off. She did not state a reason why these were shut off.

She testified that she did not apply to the Residential Tenancy Branch sooner to fix this issue because she did not know of the Branch's existence. It was only after being served with the Notice that she became aware of the Branch.

The tenant testified that the lack of electricity means she is unable to heat the rental unit adequately in the winter. She stated that, at the time of this hearing, she could see her breath inside the rental unit, and she was struggling to keep warm under blankets. When asked, she stated that she was not in immediate danger, but rather that she was simply very cold.

As a result of not having running water or electricity, the tenant testified that she must:

- purchase jugs of water on a daily basis to use for cooking, drinking, and cleaning;
- purchase and run a gas-powered generator for electricity, which can only operate for 12 hours a day;
- purchase gasoline to power the generator;
- cook using a propane stove;
- purchase propane to operate the stove;
- travel to a laundromat approximately 10 times a month to do laundry; and

- pay her son or a friend to drive her to shops on a daily basis to purchase these supplies and services.

Additionally, the tenant testified that the rental unit had mold as the result of not having electricity to heat the house to ensure that it is dry.

The tenant testified that she has contacted the utilities providers, but they advised her that the utilities needed to be in the landlord's name.

Based on her testimony, the tenant claims damage as follows:

	Cost/day	Cost/month (30 days)	Number of months	Total
Laundry	-	\$80.00	34	\$2,720.00
Water	\$7.90	\$237.00	34	\$8,058.00
Generator Fuel	\$30.00	\$900.00	17	\$15,300.00
Propane	-	\$46.00	17	\$782.00
Driving Expenses	\$5.00	\$150.00	34	\$5,100.00
Cost of Generator	-	\$400.00	1	\$400.00
Total				\$32,360.00

On the notice of dispute resolution, the tenant claimed damages in the amount of \$29,867.60 for the same categories of costs.

The tenant did not provide receipts for any of these expenses.

Loss of Quiet Enjoyment

The tenant claimed \$5,000.00 for loss of quiet enjoyment. She testified that the landlord:

- 1) on more than one occasion would drive his vehicle into the rental unit's yard, honk the horn at her and call her "white trash". She testified that sometimes he had a "big knife" with him;
- 2) would make unfounded claims to the police about her; and
- 3) in the past, had entered the rental unit without giving proper (or any) notice. She testified that she installed a new lock on the door to prevent him from entering unannounced.

Analysis

Credibility

The tenant gave affirmed, uncontroverted testimony on the issues at hand. On the whole, I found the tenant to be a credible witness. Her testimony was believable, internally consistent, and compelling. As the landlord declined to make an appearance, although duly served, the tenant's testimony was not tested in the same way a witness' testimony at contested hearing might have been. It is the responsibility of an opposing party to challenge a witness' testimony and present an alternate theory of a case.

The tenant's claim lack documents supporting portions of her damage claim. I am prepared to accept that that tenant would not have kept receipts for the recurring purchases (e.g. water, fuel, laundry), but I find it difficult to accept that she did not retain a receipt for a generator purchased at not-insignificant cost to her (the equivalent of one month's rent). I will return to this point later in my decision.

Service and Form of the Notice

Section 88 of the Act allows for the landlord to serve the Notice on the tenant by leaving a copy at the person's residence with an adult who apparently resides with the tenant.

The landlord bears the burden of proof to demonstrate that the Notice was served in accordance with the Act. The Proof of Service of Notice, as noted above, contains contradictory information. Also, it indicated at the Notice was served three days prior to the Notice being issued. As such, I grant it little weight. As the landlord was not present at the hearing, he could not give evidence demonstrating that the Notice was properly served.. As such, I cannot find that the service of the Notice was affected on December 27, 2018. I do not know if the tenant's son is an adult or apparently resided at the rental unit, as required by the Act. The tenant did not provide such information.

As the tenant testified she received a copy of the Notice on December 29, 2018, I find that she was served with the Notice on that date. The corrected effective date of the Notice then becomes January 8, 2019.

Cancellation of Notice

The landlord did not attend the hearing to provide evidence in support of the assertion that the tenant owes \$14,400.00 in unpaid rent. I accept the tenant's testimony that she

paid the rent in full and on time every month. Accordingly, I order that the Notice be cancelled.

Provision of Utilities

Based on the documentary evidence provided by the tenant, I find that it is a term of the tenancy agreement that the landlord is to provide utilities for the rental unit. I accept the tenant's evidence that he has failed to provide water as of April 3, 2016, and electricity as of September 2, 2017.

Section 27(1)(a) of the Act states:

Terminating or restricting services or facilities

- 27 (1)A landlord must not terminate or restrict a service or facility if
(a)the service or facility is essential to the tenant's use of the rental unit as living accommodation

Based on the tenant's uncontroverted testimony, I find that the landlord has breached this section of the Act.

Section 62(3) of the Act states:

Director's authority respecting dispute resolution proceedings

- 62 (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Accordingly, I order that the landlord reinstate water and electricity utilities immediately, and do everything that is necessary to affect this reinstatement.

Damages of Tenant

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7(1) 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.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 sets out a four point test to determine whether compensation is due:

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

I find that, by cancelling the tenant's utilities, the landlord breached the tenancy agreement I find that the tenant suffered loss or damage as a result of non-compliance (the amount of which will be discussed below). Similarly, I find that the tenant, through the provision of oral evidence, proved that she suffered loss as the result of the breach.

However, I do not find that the tenant acted reasonably in minimizing her loss. While attempting to have the utilities put in her own name is a step towards minimizing her loss, there is more that she could have reasonably done. I find that a reasonable person would not tolerate having the water cut off since August 3, 2016 or the electricity cut off since September 2, 2017. I find that a reasonable person would have made inquiries on ways to compel the landlord to reinstate these utilities. Such inquiries would have reasonably led to the discovery of the Residential Tenancy Branch, and the dispute resolution process which the tenant is now participating in.

I find that the steps the tenant took would have been reasonable attempts to minimize loss for a period of two months (one month to identify the problem and contact utility providers, and one month waiting for their response, and considering further steps). Accordingly, she is entitled to two months' worth of expenses incurred as a result of the landlord's actions.

I accept that, in order to replace the utilities, the tenant had to spend more money than the utilities themselves would have cost.

I accept the tenant's oral evidence as to the necessity and cost of the following expenses:

- 1) \$7.90 per day for the purchase of two jugs of water.
- 2) \$80.00 per month for the cost of laundry at a laundromat.
- 3) \$30.00 per day for gasoline to power the generator to provide her house with power for 12 hours.
- 4) \$46.00 per month for propane with which to cook.

As stated above, I do not find the lack of receipts for each of these expenses to diminish the credibility of the tenant with respect to whether these costs were incurred.

I do, however, find that the lack of receipt for the generator, to be problematic. I would expect the tenant to have retained and submitted into evidence the receipt for such a large purchase. Accordingly, I decline to award the tenant compensation for the purchase of the generator.

I do not find it reasonable for the tenant to have paid \$5.00 per day to be driven into town to purchase the supplies and services as listed above. The purchase of these supplies and services need not have been done on a daily basis. Additionally, dedicated trips for the purchase of these items are not reasonable. Presumably the tenant purchased food on a regular basis (as she is claiming for propane used for cooking), and required transport. I find that she could have purchased the supplies above on trips when she had other non-utilities related errands (such as grocery shopping) to run. Accordingly, I decline to order any compensation for the cost of being driven to purchase supplies.

The tenant has submitted into evidence a "Shelter Information" form which lists the tenant as sharing the rental unit with two other people. The tenant gave no evidence as to the identity of these individuals, or what portion of the expenses claimed by the tenant was borne by them.

I find that the costs associated with water, laundry, generator fuel, and propane are all costs that would benefit all tenants of the rental unit. Accordingly, they ought to bear the

cost of such expenses equally. As neither of these tenants made an application to recover costs, I cannot award any amount to them.

As such, I find that the tenant is entitled to one third of the costs that she has claimed for water, laundry, generator fuel, and propane.

In summary, I find that the following costs were reasonably incurred by the tenant as the result of the landlord breaching the tenancy agreement:

	Cost/day	Cost/month (30 days)	Number of months	Total	Tenant's 1/3 share
Laundry	-	\$80.00	2	\$160.00	\$53.33
Water	\$7.90	\$237.00	2	\$474.00	\$158.00
Generator Fuel	\$30.00	\$900.00	2	\$1,800.00	\$600.00
Propane	-	\$46.00	2	\$92.00	\$30.67
				Total	\$842.00

Loss of Quiet Enjoyment

Policy Guideline 6 states:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment. [emphasis added]

[...]

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation existed. [emphasis added]

I accept the tenant's testimony and find that the landlord breached the tenant's right to quiet enjoyment of the property by:

- 1) by driving his vehicle into the yard of the tenant, honking his horn, and yelling at the tenant; and
- 2) entering the rental property without providing any notice.

I find these breaches to be serious, in particular due to the tenant's testimony that the landlord carried with him a knife on at least one occasion.

The tenant did not provide specifics as to the frequency of such incidents, so I am unable to consider this factor when assessing the amount of compensation the tenant is entitled to.

I find that, due to the seriousness of the breaches, the tenant was significantly deprived of her quiet enjoyment of the rental property (indeed the tenant found it necessary to change the locks to the rental unit). This loss of quiet enjoyment was not limited to the times that the landlord was actually present on the rental property. As his entering the rental unit would be unannounced, I find that the tenant would not have had the fulsome quiet enjoyment she was entitled to at any time until she had installed the new locks (although, again, I do not know how long a time this was).

Due to the seriousness of the breaches, and the ongoing nature of the breach concerning the landlord's repeated entry to the rental unit, I find that the equivalent of two month's rent (one month for each type of conduct that amounted to a breach of quiet enjoyment) is appropriate compensation for the tenant's loss.

In summary, I order the landlord pay the tenant as follows:

Damages caused by loss of utilities	\$842.00
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Loss of quiet enjoyment	\$800.00
Total	\$1,642.00

I also order, pursuant to section 72(2) of the Act, that the tenant may offset her monthly rent against this amount.

Conclusion

I order that the Notice is cancelled.

Pursuant to sections 27(1)(a) and 62(3), I order that the landlord reinstate water and electricity utilities immediately, and do everything that is necessary to affect this reinstatement.

Pursuant to sections 67 of the Act, I find that the tenant is entitled to a monetary order in the amount of \$1,642.00. Should the landlord fail to comply with this order, this order may be filed in, and enforced as an order of, the Small Claims Division of the Provincial Court.

Pursuant to section 72(2) of the Act, the tenant may deduct this amount from any rent due to the landlord.

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: March 7, 2019

Residential Tenancy Branch