



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

This hearing was set to deal with a tenant's application for a Monetary Order for damage or loss under the act, regulations or tenancy agreement; and, orders for the landlord to comply with the Act, regulations or tenancy agreement. The hearing was held over two dates and both parties appeared and/or were represented during both hearing dates.

Preliminary and Procedural matters

Following the initial hearing date of January 29, 2019, an Interim Decision was issued and should be read in conjunction with this decision.

At the beginning of the reconvened hearing, the landlord's lawyer raised an issue with respect to the naming of the landlord. The tenants had named the property management company as the landlord rather than the entity who owns the property and is named on the tenancy agreement and receives rent from the tenants. The landlord's lawyer was of the position the Application should be amended to identify the owner as the landlord. I confirmed that the owner was represented by an agent and the lawyer during the hearing. The female tenant was agreeable to amending the Application. The style of cause of this final decision has been amended accordingly.

I reminded the parties as to how the hearing was to be conducted, including instructions with respect to not interrupting when the other party is speaking. I reviewed where we had left off at the end of the first hearing session which were the tenants' submissions concerning the tenant's loss of quiet enjoyment during the exterior repairs being made to the property.

The female tenant made brief oral statements to describe how she could periodically hear people walking on the roof and that she was uncomfortably warm while the balcony project was underway. The male tenant's oral submissions; however, were rife with opinions and his paranoid sounding conclusions as opposed to testimony concerning his experiences while repairs were taking place at the property. Given the male tenant's statements, I made a number of attempts to try to recap or summarize the tenant's position. In response, the tenant frequently interrupted me and alleged bias. I informed the tenant more than once that his continued inappropriate conduct may result in him being excluded from the hearing and the case dismissed.

The male tenant also stated that he would not be subject to cross examination. I informed the parties on a number of occasions that I would require that the tenants be subject to cross examination to ensure a procedurally fair hearing. Each time the tenant would respond "Fine, let's get this over with" but whenever the landlord's legal counsel would attempt to ask the male tenant a question he would interrupt her or unresponsive statements to the question posed to him. The tenant would also walk away from the telephone only to have the female tenant or their Advocate plead for him to return to the phone.

After over an hour of hearing time, I informed the parties, that I would not permit the procedure to continue given the tenant's failure to comply with my instructions and cautions regarding conduct that I provided orally at the original hearing, and as seen in the Interim Decision, and provided again at the reconvened hearing.

I informed the parties that I would be dismissing the tenant's application and the only thing I would consider further was whether I would dismiss the claim with leave or not.

The tenants' Advocate requested leave to reapply. The tenant's Advocate stated the tenant is ill and for every hearing there is the male tenant's behaviour only gets worse but suggested that counselling may improve the tenant's conduct in the future.

The landlord's lawyer requested the matter be dismissed without leave. The landlord's lawyer summarized the proceeding thus far as being dominated by the male tenant's ranting and raving, with little opportunity for the landlord to be heard, and at considerable expense to the landlord. The landlord's lawyer pointed out that the tenants filed a previous Application for Dispute Resolution (file number referred to on the cover page of this decision) including a monetary claim. The monetary component of that previous Application was severed but the landlord had prepared a written response, gathered evidence and was represented for that previous hearing. Then the

tenants reapplied for monetary compensation, for which the landlord prepared written responses and gathered evidence again, and has been represented over the two dates held for this hearing thus far and at this point the majority of the hearing time has been spent listening to and dealing with the male tenant's inappropriate conduct and ranting and raving.

Taking into consideration all that I have heard and been presented, I find that the tenants' claims against the landlord cannot be fully and fairly heard due to the conduct of the tenant. As of April 23, 2019 the male tenant has appeared for a hearing on at least three occasions that I am aware of and there has been no improvement in the conduct of the tenant despite being cautioned several times about his conduct. I am unpersuaded the tenant will endeavour to obtain counselling in the near future since he either has not done so yet or, if he has had counselling, it has not been effective as far as managing his behaviour is concerned. Further, I accept that the landlord has endured significant expense thus far in responding to the tenants' claims and I find that it would be prejudicial to cause the landlord further expense if the tenants were granted leave to reapply. Finally, even if I were to consider the female tenant's testimony only by excluding the male tenant from the proceeding, I am of the view her submissions fall far short of establishing an entitlement to receive the compensation claimed, which is the equivalent to 100% of the monthly rent for nearly seven months. Therefore, I find it appropriate in the circumstances to dismiss the tenants' claims without leave to reapply.

During the hearing, the tenant stated that he would just reapply if I did not consider their claims. I explained to the tenant that to reapply I would have to grant leave to reapply. As seen in this decision, I have not granted the tenants leave to reapply.

Conclusion

The tenant's claims are 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: May 2, 2019

Residential Tenancy Branch