



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LAT LRE MNDCT MNRT OLC**

Introduction

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

- Authorization to change the locks to the rental unit pursuant to section 31;
- An order to suspend the landlord's right to enter the rental unit pursuant to section 70;
- A monetary order for damages or compensation pursuant to section 67;
- A monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and
- An order that the landlord comply with the *Act*, regulations or tenancy agreement pursuant to section 62.

The tenant ("tenant") attended the hearing and the landlord was represented by her agent, ND ("landlord"). As both parties were in attendance, 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 evidence on April 21, 2019, with the exception of the landlord's request to have an agent appear on her behalf which I allowed.

Preliminary Issue

The tenant questioned whether the landlord's evidence should be accepted as it was not received by her *fourteen* days before the hearing. Rule 3.15 of the Rules of Procedure indicate the respondent's evidence must be received by the applicant not less than *seven* days before the hearing. As the landlord's evidence was received by the tenant *nine* days before the hearing, it was allowed. 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

The tenant testified that she moved out of the rental unit on March 23, 2019 after being served with an order of possession issued on March 12, 2019. Pursuant to section 62(4), the following portions of the tenant's application were dismissed as they do not disclose a dispute that may be determined under Part 5 of the *Act*.

- Authorization to change the locks to the rental unit pursuant to section 31;
- An order to suspend the landlord's right to enter the rental unit pursuant to section 70; and
- An order that the landlord comply with the *Act*, regulations or tenancy agreement pursuant to section 62.

Issue(s) to be Decided

Is the tenant entitled to:

- A monetary order for compensation for breach of quiet enjoyment and a monetary order for the cost of emergency repairs to the rental unit?

Background and Evidence

Both parties submitted a copy of the tenancy agreement. The tenancy began on May 1, 2017. Rent was set at \$850.00 per month increased to \$880.00 by the end of the tenancy. Amongst other things included in the rent is storage. A security deposit of \$425.00 was collected by the landlord which she still holds. The tenant moved out of the rental unit on March 23, 2019 after being served with an order of possession dated March 12, 2019, entered as evidence. The tenant's application was filed on March 8, 2019.

The tenant provided the following testimony. During the tenancy, the bolts to the toilet seat broke and the tenant asked the landlord to repair it as she couldn't locate replacement bolts. The landlord refused to pay for the toilet seat and the tenant replaced it herself. The tenant originally deducted \$28.00 from the rent then later paid it to the landlord. She now seeks reimbursement of \$28.00 included in the monetary order worksheet.

On the monetary order worksheet, the tenant seeks \$1,200.00, for compensation of 50% of the rent she paid for the months of November, December and January for the landlord's breach of the tenant's quiet enjoyment and use of storage common area. The tenant testified she was only able to use the rental unit for half the time, so she should be compensated for the other half by the landlord. The tenant testified the landlord would advise her of coming for inspections then not show up, interrupted sensitive health related conversations in front of her daughters and verbally attacked her on the front porch of the rental unit. No specific dates or times of the incidents were provided as evidence.

In her evidence, the tenant provided copies of email exchanges whereby the landlord provides dates and times of her monthly inspections together with the tenant's responses. Below is a table of the notifications and their corresponding inspection dates.

Notification date	Inspection date
November 28	December 1
December 13	December 16
February 11	February 15
February 16	February 27
February 28	March 5
March 7	March 14
March 13	March 18

The tenant testified the landlord was using the basement area of the house to store personal items, coming to the rental unit to access the basement. The tenant's health issues prevented her from being able to access her own items as the landlord's items were in the way. No photographs of the basement area were provided as evidence. The tenant testified she understood the tenancy agreement gave her exclusive possession of the basement which the landlord disputes.

The tenant seeks \$2,500.00 as aggravated damages for loss of income for November 2018 through to March 2019. When asked about the nature of her employment, the tenant responded she was doing odd jobs amounting to approximately \$500.00 per month however she did not provide any documentary evidence to show how she arrived at this figure.

The tenant acknowledges she did not pay rent for the months of February and March, 2019. On February 15, 2019, the landlord 'broke into' the rental unit, disturbing her quiet enjoyment. The incident was videotaped and provided as evidence by the tenant.

The landlord provided the following information. The tenant's rental unit is the downstairs unit in a two unit residential home with a basement. The tenants in both rental units as well as the landlord share the basement as a common area for storage and laundry and everybody has a key to access the common area.

The repeated requests for monthly inspections of the tenant's rental unit was because the tenant repeatedly advised her that she was not able to be home for the inspections or that her health prevented her from cooperating. Copies of email exchanges between the landlord and tenant regarding mutual availability was provided as evidence by the landlord. On February 15, 2019, the landlord attended the home to conduct a pre-arranged condition inspection and the tenant refused to answer her knocks on the door. A copy of the notice from the landlord was provided as evidence. The landlord contends she was exercising her right to enter the rental unit in accordance with the *Act* the evening of February 15th.

Analysis

- Toilet Seat Replacement

Replacing a toilet seat is governed by section 32 of the *Act* [landlord and tenant obligation to repair and maintain]. Although she testified she informed the landlord that the toilet seat was broken, I have no corroborating evidence. Section 32 of the *Act* does not allow for a tenant to make repairs or modifications to a rental unit then later seek compensation from the landlord for the repairs done. I am not satisfied the tenant gave the landlord an opportunity to repair the toilet. The claim for the toilet seat is dismissed.

- February and March 2019 rent

The tenant claims compensation for February and March 2019 rent yet testified she did not pay rent for those two months. Section 26 of the *Act* is clear, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. The tenant is not entitled to compensation for reimbursement of rent for February and March 2019. This portion of the tenant's claim is dismissed.

- 50% of rent November, December, January for breach of quiet enjoyment and use of storage common area

The tenant seeks compensation for 'use of storage common area' in her monetary order worksheet. A common area is defined in section 1 of the *Residential Tenancy Act* as any part of residential property the use of which is shared by tenants, or by a landlord and one or more tenants. I find the landlord has provided 'storage' to the tenant in the basement, albeit shared with the other tenant living in the separate unit and the landlord. The tenancy agreement does not confer to the tenant exclusive possession of the basement. This portion of the claim is dismissed.

Section 24 of the *Act* provides that:

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.

The documentary evidence provided indicates the landlord provided proper notice of entering the rental unit in accordance with section 29 on each occasion she came to inspect. Although the tenant testified the landlord made unexpected appearance at her home, interrupted phone calls, made verbal attacks and disturbed her daily rest protocols, she did not provide any evidence of specific dates and times of these incidents. The tenant has failed to satisfy me that she has been denied quiet enjoyment by the landlord and this portion of the tenant's claim is dismissed.

- Loss of income November through March – Aggravated Damages

Policy Guideline PG-16 [Compensation for Damage or Loss] defines aggravated damages as intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. 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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim with the standard of proof being on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

I find the tenant did not provide compelling evidence of significant damage caused by the landlord's deliberate actions or negligence. The tenant seeks loss of income in the amount of \$2,500.00 for these damages, however she could not clarify how or why she should be compensated. She testified she makes approximately \$500.00 per month doing odd jobs, however she did not elaborate as to why she is entitled to the have the landlord match this remuneration. The tenant has not proven her case for aggravated damages and this portion of the tenant's claim is dismissed.

Conclusion

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: May 8, 2019

Residential Tenancy Branch