



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, LRE, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the landlord's agent and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his agent had permission to speak on his behalf. "Witness KS" testified on behalf of the landlord and "witness" SEL" and "witness SJ" testified on behalf of the tenant at this hearing. All three witnesses were excluded from the outset of the hearing and called back in later. Both parties had equal opportunities to question the three witnesses, who were all affirmed under oath. This hearing lasted approximately 69 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence package.

During the hearing, the landlord agreed to have a third party do repairs at the rental unit, with at least 24 hours' written notice to the tenant first, and for the landlord not to be

present during these times, at the rental unit. The tenant requested this order during the hearing.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for her application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and their witnesses, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began approximately 9 years ago. The landlord purchased the rental unit in May 2017 and continued the tenancy on a month-to-month basis with no new written tenancy agreement signed. Monthly rent in the amount of \$880.00 is payable on the first day of each month but the tenant is entitled to a full rent reduction where she is not required to pay any rent to the landlord since January 2019, until repairs are done, as per an order from an RTB Arbitrator at a previous hearing. A security deposit of \$275.00 was paid by the tenant to the former landlord. The tenant continues to reside in the rental unit.

The tenant seeks a monetary order of \$8,000.00 plus the \$100.00 application filing fee. During the hearing, the tenant withdrew her claim for \$2,000.00 for the landlord taking her to previous RTB hearings and the landlord's numerous appointments where he did not show up to the rental unit. She said that she already claimed for this relief at previous RTB hearings.

The tenant seeks \$4,000.00 for "relentless harassment" and "physical threats." The tenant explained that the landlord has been harassing her for two years, tried to hit her in the face, she called the police, and she has the police file numbers but no police reports. The tenant's daughter, witness SEL, testified that the landlord harassed the tenant by yelling and name-calling, that became worse at the beginning and end of each month, and that he hated their family. The tenant's friend, witness SJ, testified that she witnessed the landlord being rude to the tenant but polite to her, when she came to the

rental unit. In response to the landlord's agent's question, witness SJ was unable to provide specific dates and times of the harassment for the last two years.

The tenant seeks \$2,000.00 for "bad faith evictions" and the landlord unreasonably disturbing the peace. She claimed that there were five previous RTB hearings, where the landlord did not defend his claims and she was successful, and the landlord is aggressive so she has to have people accompany her when the landlord comes to do repairs. She maintained that the landlord has failed to do RTB-ordered repairs and he has given her appliances infested with insects and rodents. The tenant's witness SEL stated that the landlord walks around the rental unit, puts notes on the door, knocks a lot on the door, takes photographs of the unit which she has asked him to stop doing, made 30 appointments to do repairs, and has given disgusting appliances to the tenant. The tenant's witness SJ confirmed that the landlord has given the tenant dirty and infested appliances.

The landlord disputes the tenant's entire claim. He stated that he never hit the tenant or any other woman. He said that the tenant screams at him so he raises his voice louder in response. He claimed that he has made appointments for repairs but the contractors do not always show up on time, and he has no control over them. He explained that the tenant has refused entry to the unit three times for repairs. He stated that the tenant has not paid rent since January 2019 and that she is making things up so that she does not have to pay the rent.

The landlord's witness KS confirmed that he does repairs for the landlord at the rental unit. He said that the tenant refused entry when he tried to put a refrigerator and stove in the unit since April 30, 2019, stating it was not clean, when it was in good second-hand condition. He claimed that the tenant does not want to pay rent, he is unable to always finish the required work in one visit, and he did electrical work because the tenant was not there, only her relatives were present. He said that he needs at least a day to do some work and he can only work when the tenant allows him to be there.

Analysis

The tenant provided witness statements for the hearing but neither she, nor her two witnesses, reviewed them during the hearing. She said that some of the witnesses were unable to attend this hearing to corroborate their statements.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application of \$8,000.00, without leave to reapply.

The tenant claimed \$4,000.00 because she said the landlord harassed her, tried to hit her, and threatened her; however, these are criminal claims that are not within my jurisdiction of tenancy-related matters at the RTB. The tenant did not provide any copies of police reports, only police file numbers, which do not allow me to access the confidential police database. The tenant did not provide a breakdown for the above number. This claim is dismissed without leave to reapply.

I find that the tenant failed to show that she is entitled to \$2,000.00 for "bad faith evictions" and for the landlord trying to unreasonably disturb the peace. This claim is dismissed without leave to reapply. The tenant was not evicted from the rental unit. She continues to reside there. The landlord is entitled to issue notices to end tenancy and pursue his legal rights at the RTB, as is the tenant. The landlord is entitled to enter the tenant's rental unit to inspect and have repairs completed. The landlord, the landlord's agent and the landlord's witness KS confirmed that they entered to complete repairs and provide appliances, when the tenant refused entry, refused the appliances, and complained about the amount of time it took for repairs.

During the hearing, the tenant withdrew her claim for \$2,000.00 for the landlord making numerous appointments and not showing up, and taking the tenant to the RTB a number of times. The tenant said that she already made these claims at previous RTB hearings and this was duplication. She also claimed for the same relief in this application, as noted in the paragraphs above. This claim is *res judicata*, as it has already been decided.

As the tenant was unsuccessful in this application, except for what the landlord agreed to, I find that she is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I order the landlord to have a third party do repairs at the rental unit, with at least 24 hours' written notice to the tenant first, and for the landlord not to be present during these times, at the rental unit.

The remainder 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: June 29, 2019

Residential Tenancy Branch