



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT OLC

Introduction

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

- a monetary order for compensation for loss, or other money owed under the Act, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the Act, I find that the landlord was duly served with the Application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were received in accordance with section 88 of the Act.

Issues

Is the tenant entitled to a monetary order for compensation for loss or money owed under the Act, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on April 15, 2018, with monthly rent set at \$1,050.00, payable on the first of the month. The tenant paid a security deposit in the amount of \$525.00 and a pet damage deposit in the amount of \$100.00 to the landlord, which the landlord still holds.

The tenant is making a monetary claim in the amount of \$250.00 as set out in the table below.

Item	Amount
Reimbursement of deposit paid for utilities paid to the municipality	\$150.00
Compensation for stress and anxiety	100.00
Total Monetary Order Requested	\$250.00

The tenant confirmed in the hearing that she is requesting a total monetary order of \$250.00, and not \$350.00 as set out in her application. The tenant testified that she had paid the municipality \$150.00 in order to set up her utilities. It was undisputed by the landlord that this amount, although collected by the municipality, is set by the landlord. The tenant is requesting that this amount be reimbursed to her, as she was informed by the municipality that they would do so with the permission of the landlord, or if an order is made by an Arbitrator. Although the original testimony of the landlord was that this utility deposit was not set by herself, the landlord confirmed later in the hearing that she does in fact set the amount of the deposit, and that she would like the \$150.00 deposit to remain.

The tenant is also requesting \$100.00 in compensation for her loss of quiet enjoyment due to the stress and anxiety caused by the landlord. It was undisputed by both parties that the landlord had moved the tenant's belongings from the side of the home and front steps without the tenant's permission. Both parties confirmed that there are 4 rental units, and the tenant resides in one of them. The landlord does not deny that she had moved the tenant's belongings, but did so after issuing several letters to the tenant informing her to remove her items. The landlord testified that she had a duty to maintain the repair the property. The tenant testified that due to the landlord's actions, she had to obtain medication for stress and anxiety as she could no longer relax in her own home.

The tenant is also requesting orders for the landlord to comply with the Act, specifically giving proper notice before inspecting or attending the residence, and respecting the tenant's right to peaceful and quiet enjoyment.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which 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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Although I find that it was undisputed that the landlord set the amount of the deposit collected by the municipality in order to set up her utilities, I find that this money was collected by, and is in the possession of, the municipality and not the landlord. As this dispute is between the landlord and the tenant, and as the money is not in the landlord's possession, I decline to make any orders for the return of this money. I dismiss this portion of the tenant's application without leave to reapply.

The tenant also applied for compensation for loss of quiet enjoyment.

Section 28 of the *Act* states the following:.

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

(b) freedom from unreasonable disturbance;...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

It was undisputed by the landlord that, out of frustration, she had moved the tenant's personal belongings without the tenant's permission, or without an Order of an Arbitrator. Although I accept the landlord's testimony and explanation that she felt she had a duty to repair and maintain the rental property, I do find that she had contravened the *Act* by infringing on the tenant's rights by moving the tenant's personal belongings without her permission. I am not satisfied that the tenant's belongings posed any immediate risk or danger to any other occupants, the landlord, or the landlord's property. The landlord did not file any applications for dispute resolution, nor did she issue any notices to end tenancy after the tenant failed to respond to her letters. Instead the landlord had decided to deal with the matter in a manner that violates the tenant's right to enjoy the rental property free from unreasonable disturbance. I am satisfied that the deliberate actions of the landlord had caused the tenant a significant amount of stress and anxiety.

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the

injury caused by the wrongdoer's behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. However, unlike punitive damages, the conduct of the wrongdoer need not contain an element of wilfulness or recklessness in order for an award of aggravated damages to be made. All that is necessary is that the wrongdoer's conduct was highhanded. The damage must also be reasonably foreseeable that the breach or negligence would cause the distress claimed.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought. The damage award is for aggravation of the injury by the wrongdoer's highhanded conduct.

The tenant requested \$100.00 for the stress and anxiety caused by the landlord's actions. I find that it was undisputed by the landlord that she had deliberately moved the tenant's belongings and I am satisfied that this caused significant distress to the tenant. I find that the \$100.00 requested to be reasonable, and accordingly, I allow the tenant's monetary claim as requested. In order to implement this monetary award, I order the tenant to withhold \$100.00 from a future monthly rent payment to the landlord.

The tenant requested an order for the landlord to refrain from entering the rental property. Section 29(1) of the *Act* states the following:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord to repair and maintain a rental property:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I am not satisfied that the landlord had contravened section 29 of the *Act*. I accept the landlord's testimony that she has a duty to repair and maintain the residential property as required by section 32 of the *Act*. I do, however, make an order that the landlord comply with the tenant's right to quiet enjoyment as set out in section 28 of the *Act* as summarized above by refraining from touching or moving the tenant's personal belongings without her permission, or without an Order of an Arbitrator, unless in the case of an immediate emergency that requires the landlord to do so.

Conclusion

I allow the tenant a monetary award of \$100.00 for the landlord's contravention of section 28 of the Act. In order to implement this monetary award, I order the tenant to withhold \$100.00 from a future monthly rent payment to the landlord. I also order that the landlord comply with section 28 of the *Act*, and not touch the tenant's personal belongings without her permission or without an Order of an Arbitrator unless in the case of an immediate emergency that requires the landlord to do so.

I dismiss the remaining portion of the tenant's application 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: August 9, 2019

Residential Tenancy Branch