Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, ERP

Introduction

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

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package sent by registered mail, I find that the landlord was duly served with this package in accordance with section 89 of the *Act.* Although the tenant testified that they included their written evidence, photographic evidence and a USB containing video evidence to the landlord with their dispute resolution hearing package, the landlord testified that no such evidence was provided to the landlord with that package, nor has the landlord received that evidence. As the tenant did not provide any Canada Post Tracking Number to confirm having sent the evidence to the landlord, I have not considered the tenant's written, photographic or video evidence in reaching my decision. The landlord testified that he did not send copies of his written evidence to the tenant. As such, I advised the parties that I could not consider any of the landlord's written evidence.

Previous Decision History

Although neither party made any reference to previous hearings or applications in the information they submitted to the Residential Tenancy Branch (the RTB) before this hearing, they agreed at the hearing that there had been two previous applications submitted by the tenant (see above) this year.

On March 1, 2019, the parties came to an agreement recorded by the presiding arbitrator in which the parties agreed that the tenant would be allowed to change the locks to the rental unit, would be compensated $25.00 for changing the locks, and would provide the landlord with a duplicate key to the rental unit (see above).

As was noted in the March 28, 2019 decision of the arbitrator who presided over the March 1, 2019 hearing, with respect to the tenant's request for a correction of the March 1, 2019:

The tenant's request for correction states the following:

> *I was awarded a rent free month to be added onto any notice to move or if I want to move. I guess I somehow confused her by saying "ok, if you feel I need that, but I think just changing the locks in a good way to resolve things for now but you can award that if you want but its up to you." I didn't say no and hinted yes but wanted to make it the arbitrator's choice. I need that, please add it back in or I'll have to waste everyone's time with another dispute- please.*

The arbitrator declined to issue a correction as that arbitrator was certain that the terms of settlement as recorded in their decision were an accurate reflection of the settlement agreed to by both parties. This correction decision rejected the tenant`s claim that they were awarded "a rent free month to be added onto any notice to move or if I want to move." No such award was made by that arbitrator.

The tenant subsequently applied for a monetary award of $716.25, and the issuance of various orders including emergency repairs, in an application that was dismissed by another arbitrator appointed pursuant to the *Act* on April 9, 2019. The application was dismissed with leave to reapply because the arbitrator was not satisfied that the tenant had properly served the landlord with the dispute resolution hearing package.

After receiving the oral decision on April 9, 2019, the tenant immediately submitted a new application that same day, this time seeking a monetary award of $650.00, plus the issuance of orders against the landlord. A hearing regarding this matter was scheduled for May 28, 2019. Although the landlord attended that hearing, the tenant did not. On that basis, the arbitrator presiding over that hearing dismissed the tenant's application without leave to reapply.

On June 7, 2019, the tenant submitted a request to the RTB for review consideration of that decision. The tenant did so because they were unable to attend the May 28 hearing because of circumstances that could not have been anticipated and were beyond their control. In the information attached to the tenant's request for review, the tenant provided evidence to confirm that they are allergic to bee stings and were stung by a bee one half hour before that hearing. Although the tenant used an Epi-pen, the tenant lost consciousness and could not connect with this teleconference hearing. The arbitrator responsible for examining the tenant's application for review consideration decided that the tenant had adequate grounds to obtain a review hearing of this matter, and by way of their June 18, 2019 ordered a new hearing of this matter pursuant to section 81 of the *Act*.

In their June 18, 2019 Review Consideration Decision, the reviewing arbitrator suspended the May 28, 2019, pending the outcome of the new hearing that I have been delegated responsibility to undertake. In so doing, the reviewing arbitrator included the following orders:

...Notices of the time and date of the hearing are included with this Review Consideration Decision for the Tenant to serve on the Landlord within 3 days after receipt of this Decision. *The Tenant must also serve a copy of this Decision on the Landlord. I further order the Tenant to serve the Landlord with their current address for service together with the notice of hearing and decision. At the new hearing, the Tenant will be required to demonstrate how the documents outlined above have been served to the other party.*

*Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to rely upon at the new hearing...**Failure to serve these documents in accordance with the Act and the Rules of Procedure may result in the evidence being excluded from consideration...***

Further, I order the Tenant to serve the Landlord with their application for dispute resolution and evidence within 3 days of the date on which the Tenant serves them with the notice of hearing.

Failure to attend the hearing at the scheduled time and to meet deadlines for the submission and service of evidence may result in a decision being made on the basis of information before the arbitrator and the testimony of the party in attendance at the hearing...

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Should an order be made requiring the landlord to undertake emergency repairs to this rental unit? Should any other orders be issued with respect to this tenancy?

Background and Evidence

The tenant said that he moved into this rental unit in a multi-tenanted home on or about June or July 21, 2017. The landlord purchased the property in June 2018. Monthly rent was originally $650.00, recently increased to $666.25. The landlord continues to hold the tenant's $325.00 security deposit.

The tenant's current application for a monetary award of $650.00 and the issuance of orders against the landlord, including one for emergency repairs to his entrance door, described the issues in dispute in the following terms:

I have a psychotic conniving creep homosexual neighbor on drugs who is competing for my place. My landlords are forced to rent to him & he abuses power. He lived in my suite before me & he knows my door is paper thin. He threw a recycling bin at it & put a hole in my door. Also the door has a small window, it can easily be broken into. I was awarded a new door last dispute but denied it & just changed the locks instead. I don't feel safe or secure.The door is old & rotten & needs to be replaced...

I can't sleep, I'm being harassed & teamed up on to be renovicted. I can prove this. I just want a rent free month to be added onto to any notice or to be used if I want to move. That way it will hopefully cause the landlord & tenants to leave me alone & not compete for my place. I just want to be in a fair normal situation. I was awarded this at the last dispute on march 1st but accidentally confused the arbitrator by saying I think changing the locks is a good enough way to resolve it for now...

They've been texting, emailing, calling early in the morning from private numbers & unknown numbers, coming by unannounced, never sending me any warnings or communication in writing & only respond to letters if I sent it by registered mail or if there is a dispute hearing. If I call them & give in to there made up rules they ignore my call. I can't communicate with them at all little alone the way the act requires & can't be left alone. Rules are in place to prevent complications, thanks...

During the hearing, the parties agreed that the Witness accepted responsibility for having damaged the door, and, with some assistance from the tenant has repaired and repainted the damaged section. Although repaired, the tenant maintained that the door is old and "paper thin." The landlord testified that the door has been repaired. The landlord did not know how old the door was, estimating that it could be the original door on this suite. The landlord said that the building is more than 50 years old.

The tenant produced no Monetary Order Worksheet or even an adequate description of how they arrived at $650.00 as the amount claimed in their application. The tenant claimed that "they" harassed him and discriminated against him and that "they" are "competing against him" for his rental unit. When asked who "they" were, the tenant claimed that everyone in this multi-unit house are conspiring against him. The tenant claimed that "they" have made intimidating and harassing phone calls to him, at different times of the day, prompting the tenant to change his phone number. The tenant also maintained that the landlord only responds to registered letters and notices of dispute resolution hearings. Although the tenant made repeated references to recordings of conversations with others in the building, and videos, the tenant confirmed that he had not entered any of these into evidence for this hearing.

The tenant asked for the issuance of some type of order against the landlord requiring the landlord to pay for a month's rent or more in the event that the landlord tries to "renovict" him. Although the tenant confirmed that the landlord has not issued any notice to end tenancy, the tenant expressed fear that the landlord would do so. The tenant said that he was trying to get ahead of this renoviction process by obtaining an order requiring the landlord to provide compensation before the landlord commences any process to try to evict him. The tenant said that his objective was "to make it hard for the landlord to evict him." The tenant was concerned that the landlord would evict only him and let others remain in the rental building and obtain the tenant's suite.
The landlord testified that while he does have plans to eventually undertake construction that would require all tenants to leave the premises, the landlord said the plans were on hold for now and would not likely be in place for another year or two. The landlord said that in the event that the landlord needs the property vacated, all tenants would be receiving notices to end their tenancies. The landlord steadfastly denied the tenant's claim that he has let anyone else have the new keys to the tenant's rental unit. The landlord said that he has not entered the tenant's rental unit without the tenant's authorization and understood that written notice would have to be given to the tenant to inspect or enter the rental unit. The landlord said that the tenant's frequent applications for dispute resolution are time-consuming and placing a burden on the landlord.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove on the balance of probabilities that the landlord has contravened the *Act* and that the tenant is entitled to a monetary award for such contraventions.

At the hearing, it was very difficult to focus the tenant on the basis for his request for a monetary award. The tenant seemed to have difficulty separating any claim the tenant might have against the landlord from the tenant's allegations about the behaviours and actions of others in the rental building, particularly the Witness who lives on the same ground level as the tenant,.

The tenant would not accept that I cannot issue a pre-emptive monetary award on his behalf in the event that the landlord does eventually issue a notice to end this tenancy for landlord's use of the property. Any such order would have to wait until a notice to end tenancy were issued. The tenant could then apply to cancel the notice to end tenancy or seek a monetary award in the event that the landlord does not comply with the requirements attached to the issuance of certain kinds of notices to end tenancies.

Although the tenant never really referenced the possible grounds for the issuance of the monetary award the tenant was seeking, I note that section 28 of the Act establishes a tenant's right quiet enjoyment, which include 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.*

While the tenant has found his neighbour's actions upsetting, his unsatisfactory interactions with some of his neighbours are not necessarily subject to intervention by his landlord. Residing in a multi-unit rental building sometimes leads to disputes between tenants. Other than his sworn testimony, the tenant provided nothing to support his assertion that the landlord has taken inadequate action to safeguard the tenant's right to quiet enjoyment of the premises. The tenant provided little evidence that others are entering his rental unit with keys supplied by the landlord.

Although I have given the tenant's request that the landlord undertake emergency repairs careful consideration, I find that the repairs sought by the tenant are by no means emergency repairs as defined by the *Act*. The parties agree that the damaged door has been repaired. While the tenant would like a new door for his rental unit, his claim that the door is too thin would have been known to the tenant when he chose to commence this tenancy little more than two years ago. In this regard, I note the following wording of section 32 of the *Act*, which reads in part as follows;

> ***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.

Given that this is a dwelling that is over 50 years of age, I find little evidence that the landlord has failed to maintain the door in a state of decoration and repair that contravenes section 32(1) of the Act. For this reason, I am not making any order requiring the landlord to undertake emergency repairs to replace a door that the Witness and the tenant recently repaired themselves.

Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement." Section 65 of the *Act* reads in part as follows:

65 *(1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:*

(c) that any money paid by a tenant to a landlord must be

(i) repaid to the tenant,

(ii) deducted from rent, or

(iii) treated as a payment of an obligation of the tenant to the landlord other than rent;

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

As I find no contravention of the *Act* by the landlord that has reduced the value of the tenancy agreement, I dismiss the tenant's application for a monetary award without leave to reapply for the items claimed in the tenant's application.

The tenant expressed every intention of continuing to make applications for monetary awards for the same issues that are subject to decisions of arbitrators appointed pursuant to the *Act*. At the hearing, I explained that decisions of arbitrators are final and binding. The legal principle of *res judicata* would prevent any future arbitrator from making a decision on an issue that was properly before a previous arbitrator and one where that previous arbitrator issued a decision on the merits. While the tenant could submit a claim for any new issue that emerges during this tenancy, an arbitrator would be bound by previous decisions, including this one where I have found that the tenant is not entitled to an order requiring the landlord to conduct emergency repairs on his door and that the tenant is not entitled to a monetary award for losses arising out of this tenancy for alleged contraventions that have occurred to date.

I find no basis to the tenant's claim that the landlord has been either entering the tenant's suite without the tenant's permission or that the landlord has provided others in this rental dwelling copies of the tenant's newly installed key to access the rental unit. I issue no orders in this regard.

Although there is no real evidence that the landlord has failed to comply with provisions in the *Act* with respect to providing emergency contact numbers or to inspect the rental suite, out of an abundance of caution, I order the landlord to undertake the following:

- I order the landlord to provide the tenant with an emergency phone number or email address where the tenant can contact the landlord in the event that there is an emergency that arises in this rental suite that requires the landlord\s immediate attention.
- I order the landlord to provide 24 hours written notice of any request that the landlord may have to enter the rental unit and inspect the premises.

In closing, I wish to reassure the tenant that this tenancy cannot end without the landlord's issuance of a proper notice to end tenancy on the prescribed RTB form. That form will enable the tenant to contest the notice to end tenancy if the tenant believes there are insufficient grounds to end the tenancy. Monetary compensation would only then be possible in the event that there is a provision in the *Act* that would qualify the tenant for such compensation **after** having received a notice to end tenancy. There is no legislative provision in the *Act* that enables me or any other arbitrator to provide a monetary award for such compensation before a notice to end the tenancy has even been issued.

Conclusion

I dismiss the tenant's application without leave to reapply.

I issue the following orders to the landlord:

- I order the landlord to provide the tenant with an emergency phone number or email address where the tenant can contact the landlord in the event that there is an emergency that arises in this rental suite that requires the landlord\s immediate attention.
- I order the landlord to provide 24 hours written notice of any request that the landlord may have to enter the rental unit and inspect the premises.

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 09, 2019

Residential Tenancy Branch