



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, MNDCT, OLC, RP, RR

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “*Act*”) to restrict or suspend the Landlord’s right to enter the rental unit, for monetary compensation, for an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* (the “*Regulation*”) and/or tenancy agreement, for regular repairs, and for a reduction in rent due to repairs not completed.

The hearing was initially scheduled for November 5, 2019 and was adjourned to be reconvened on November 14, 2019. An interim decision was issued on November 6, 2019 and should be read in conjunction with this decision. Service of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence was confirmed at the initial hearing date.

The Tenant and the Tenant’s advocate (the “Tenant”) were present for both hearing dates and had a witness join on each hearing date as well. The Landlord was present for the hearing on November 5, 2019 but did not attend the hearing on November 14, 2019. As both parties would have been served with the notice of the reconvened hearing date, the hearing on November 14, 2019 continued in the absence of the Landlord. The Landlord stated that he had a witness available on November 5, 2019 but there was not enough time to have the witness call in on that date. As the Landlord did not attend the reconvened hearing, the Landlord’s witness did not attend either.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions, call witnesses and question the other party.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

At the reconvened hearing on November 14, 2019 the Tenant requested an adjournment so that the application could be amended to include additional monetary claims. However, as noted in the interim decision of November 6, 2019, amendments to the application would not be accepted. I also find that denying the adjournment would not unfairly prejudice either party as the Tenant is at liberty to file a new Application for Dispute Resolution should there be any additional claims that were not included on this application. This would also allow the Landlord a fair opportunity to respond through submission of his own evidence. Therefore, the Tenant's request for an adjournment was denied and the hearing continued with the claims as stated on the application.

The Tenant submitted evidence the day prior to the reconvened hearing on November 14, 2019. As stated in the interim decision of November 6, 2019, further evidence from either party would not be accepted. The hearing was not adjourned for additional evidentiary submissions, but instead to ensure the parties had time to make submissions regarding the initial claims on the application. As such, the evidence submitted by the Tenant prior to the reconvened hearing was not accepted and not considered as part of this decision.

At the end of the reconvened hearing on November 14, 2019, the Tenant indicated that they had one more witness they would like to call. When asked what the witness would be speaking to, the Tenant stated that it was regarding an incident that occurred the day prior to the reconvened hearing. As such, it was determined that the witness would not be providing relevant testimony regarding the initial claims filed. The Tenant agreed that the witness did not need to be called for this hearing.

Issues to be Decided

Should the Landlord's right to enter the rental unit be suspended or restricted?

Is the Tenant entitled to monetary compensation?

Should the Landlord be ordered to comply with the *Act, Regulation* and/or tenancy agreement?

Should the Landlord be ordered to complete regular repairs?

Is the Tenant entitled to a reduction in rent due to repairs not completed or services/facilities not provided?

Background and Evidence

The Tenant provided testimony that the tenancy started approximately 10 years ago and that the current Landlord purchased the property around April 2017. She stated that monthly rent is set at \$880.00 but the Tenant is currently not paying any rent due to previous dispute resolution decisions that authorized a progressive rent reduction until repairs in the rental unit were completed. The Tenant noted that the rent reduction reached \$0 in January 2019. The Tenant stated that she paid a security deposit at the start of the tenancy which was approximately \$375.00.

The Landlord testified that he purchased the property in 2017 with the tenancy already in place. He stated that current monthly rent is \$880.00 but that the Tenant has not been paying the rent. The Landlord stated that he did not receive a security deposit from the previous landlord.

Regarding the Tenant's claim to restrict or suspend the Landlord's right to enter the rental unit, the Tenant provided testimony that the Landlord is constantly wandering around the residential property, including at night. She stated that the Landlord will walk on the property or knock on the door of the rental unit without any prior notice. The Tenant also noted harassment from the Landlord and referenced an incident when he had tried to hit her.

The Tenant stated that she wants restrictions on the Landlord's right to be on the residential property for her own peace of mind. The Tenant stated that the Landlord has made over 60 appointments to enter the rental unit to do repairs although nothing has been completed. She stated that the Landlord will give an 8-hour window for entry but will often attend and do 15 minutes of work.

The Tenant submitted written communication between the parties into evidence which includes written notices to enter the rental unit and the Tenant's responses, such as seeking clarification on the purpose of entry when it is unclear.

The Tenant also noted issues that have occurred that she believes are connected to the Landlord's harassment, such as damage to her car and screws left around her car tires. She noted that these incidents usually occur at the beginning of the month when rent would be due. The Tenant also referenced photos submitted into evidence regarding damage to her car. The Tenant stated that the Landlord giving unreasonable notice to enter the rental unit is further evidence of his attempt to harass her.

The Landlord testified that the Tenant is lying and that she screams at him when he goes to the rental unit to collect rent. He stated that he provides notice when repairs will be done in the rental unit so that the people conducting the repairs can enter the rental unit. The Landlord also noted that he knows nothing about the claims of harassment including damage to the Tenant's car.

Regarding the Tenant's claim for regular repairs, she stated that the Landlord was previously ordered to complete repairs and that once the repairs are complete, he was to file an Application for Dispute Resolution for authorization for the rent to return to the usual monthly amount. The Tenant submitted the previous dispute resolution decisions into evidence and the file numbers are included on the front page of this decision.

The Tenant stated that not all of the repairs have been completed and that those that have been done have not been done by a professional and have not been completed adequately. Regarding new repairs that have not been dealt with in previous hearings, the Tenant stated that the hot water tank needs replacing as it has been corroded with rat feces/urine, that the fridge and stove need replacing, and that the rental unit needs cleaning and sanitizing due to issues caused by the rat infestation.

The Tenant stated that the Landlord had provided a new fridge and stove but that they were cockroach infested and dirty, and therefore unusable. The Tenant stated that the Landlord was notified of her request for additional repairs in a letter dated August 28, 2019 which they noted was not included in evidence.

The Landlord responded that he tried to complete the repairs in March 2019. He also noted that he bought a used stove as that was all he could afford but that he cleaned it and it was in good working order. The Landlord stated that all of the repairs were

completed by May 22, 2019 and following this he went to the Residential Tenancy Branch where he was advised to evict the Tenant for non-payment of rent. The Landlord stated that he had a handyman complete the repairs and that he cannot always afford new appliances or professionals due to the Tenant not paying any rent.

The Tenant stated that although a decision has already been made previously on repairs needed in the rental unit, the issues have expanded such that by not completing the repairs there are further repair issues needed in the rental unit. The Tenant stated that this includes painting the rental unit, as well as cleaning and sanitizing the rental unit due to the presence of rat urine and feces. They also stated that the cupboards have not been replaced since the home was new in the 1950's and that the original flooring is also well beyond it's useful life expectancy.

The Tenant referenced multiple photos submitted into evidence that they stated show the repairs needed including the baseboards and drywall contaminated by rat urine, as well as damaged areas on the walls, kitchen counters, hot water tank and other areas of the rental unit. They also noted that the appliances don't work due to rats chewing through the wiring.

The Tenant's witness, S.S. joined the hearing and was affirmed to be truthful in her testimony. She stated that she is a neighbour of the Tenant and that they share a Landlord. The witness stated that the Landlord has been uncooperative, and she provided testimony regarding aggressive behaviour of the Landlord.

The witness stated that she has not seen the Landlord engaging in any destructive behaviour on the property but agreed that the issues seem to line up to when rent is due and suggested that this may be to get back at the tenants.

The witness testified as to repair issues regarding her own tenancy. She also stated her belief that the landlord takes advantage of tenants.

The Landlord responded to the witness and stated that he completes repairs for her due to her paying rent on time.

Regarding the Tenant's application for an order for the Landlord to comply, the Tenant states that this is regarding her request for the Landlord to complete the repairs which are still not done. She stated her position that due to a previously ordered rent reduction

when repairs are not completed, the Landlord should now be paying her each month in keeping with the monthly \$50.00 rent reduction from a previous decision.

The Landlord stated that the issues first arose with the previous landlord. However, he stated that the repair person can be consulted with to confirm that repairs have been completed and also stated that he cannot afford to fix everything with the Tenant not paying any rent. The Landlord stated that if the Tenant moves out, he would demolish the home and sell the land because of the number of repairs needed.

As stated, the parties have had numerous previous hearings. The Tenant submitted copies of previous decisions into evidence. In the first of the file decisions noted on the front page, a settlement agreement was reached through a decision dated April 27, 2017, and the parties agreed to the following repairs:

- Three electrical outlets in the living room
- Two electrical outlets in the kitchen
- Three elements on the stove
- The stove oven
- Back door
- Rat infestation and rat holes
- Bathroom shower leak
- Dryer vent

In a decision dated October 16, 2017 the Tenant was awarded a rent reduction due to the agreed upon repairs not being completed. The Tenant was ordered to continue reducing rent by \$50.00 for each month that the repairs were not completed. The Landlord was also ordered to apply for dispute resolution when the repairs were completed to obtain authorization for the rent to return to the regular monthly amount.

In a decision dated August 9, 2018 it was confirmed that the Tenant would continue to reduce the rent by \$50.00 per month should the repairs not be completed. The parties also came to a settlement agreement regarding when the Landlord would be entering the rental unit to conduct repairs.

In a decision dated June 29, 2019, the Tenant applied for monetary compensation and to restrict the Landlord's right to enter the rental unit. In this decision the Tenant was seeking \$4,000.00 for harassment and physical threats from the Landlord and

\$2,000.00 for “bad faith evictions”. The Tenant’s monetary claims were dismissed without leave to reapply.

The Tenant also submitted copies of written communication with the Landlord, and a number of photos into evidence including photos of the stove, oven, fridge, washing machine and other areas of the rental unit.

The Tenant applied for compensation in the amount of \$8,040.99 and submitted a Monetary Order Worksheet outlining the claims as follows:

- Loss of quiet enjoyment and harassment: \$1,319.85
- Rent reduction: \$2,700.00
- Repairs: \$4,021.14

The Tenant presented testimony on the claim of \$1,319.85 for loss of quiet enjoyment and harassment. She stated that they are only claiming for issues that occurred after June 29, 2019 as they had previously applied prior to a hearing in June 2019 and were aware that issues occurring prior to the June 2019 hearing could not be heard. The Tenant stated that the harassment includes an incident where paint was found in her car on both the exterior and interior and an incident where the word ‘bitch’ was etched into her front door.

The Tenant submitted photos of her car, as well as a photo of the front door after the foul word was etched onto it. The Tenant also stated that screws were left by her car tires and submitted a photo of the screws into evidence.

The Tenant stated that while she has never seen the Landlord conduct these acts, the timing is suspicious, given that they occur around the time of the month when rent is due or following previous hearings.

The Tenant also referenced a loss of quiet enjoyment and stated that the Landlord comes onto her property often, looking into their windows and being generally intrusive. The Tenant stated that the Landlord does not have any reason to be on the residential property and that he was previously ordered to only attend the rental unit with a third-party professional for completion of repairs after proper notice to enter.

The Tenant also stated that the Landlord’s actions have made it difficult to move given that he harasses her constantly with eviction notices and ongoing hearings. She also

stated that he contacted income assistance to inform them that she is not paying rent which has caused significant issues for the Tenant's finances.

The Tenant explained the break down of the amount claimed for loss of quiet enjoyment and harassment and stated that they have estimated that the Tenant spends 50% of her day dealing with the issues. Therefore, they calculated a daily rate of \$29.33 (based on a monthly rent of \$880.00) and divided that by two to get a rate of \$14.66 per day for the 90 days between June 29, 2019 and the date the application was filed. The Tenant also noted that additional days up to the date of the reconvened hearing should be added for all of the monetary claims.

The Tenant is also seeking \$2,700.00 as a rent reduction. They stated that as the Tenant was ordered to reduce the rent by \$50.00 for each month that the ordered repairs were not completed, the rent reached \$0 per month as of January 2019. Therefore, they stated their belief that the \$50.00 reduction should continue with the Landlord owing an additional \$50.00 for each month that passes without the repairs completed. The Tenant therefore calculated the amount owing from the Landlord at \$2,700.00.

Lastly, the Tenant is also seeking \$4,021.14 as the amount lost due to the repairs not being completed. They stated that the repairs were ordered to be completed by May 30, 2017 through a decision dated April 27, 2017. However, the Tenant stated that the outlets and back door was partially completed, but the remainder of the repairs remain uncompleted and getting worse.

The Tenant noted in particular that the rat infestation has gotten worse leading to concerns for health and safety as well as additional repairs needed such as to the hot water tank, appliances, and the general condition of the rental unit.

The Tenant stated that the amount of \$4,021.14 claimed was calculated at \$29.33 per day in rent multiplied by 914 days (beginning in 2017) and then calculated at 15% of the day to be reasonable as to the level of disturbance caused by the repairs not being completed.

The Tenant had her daughter attend the hearing as a witness as the daughter also resides in the rental unit. The witness stated that the Landlord will yell and scream at them and has told them that he will fix the repairs if they pay \$1,400.00 per month in

rent. The witness noted that the situation with the Landlord has been stressful and anxiety inducing.

The witness further testified that the police have had to be called two to three times. The witness stated that there has been many incidences of vandalism and other scary events occurring to them including when they began coughing in the rental unit and had to call 911 to go to the hospital. The witness stated that this occurred on August 1, 2019 following a previous hearing. The witness stated that she has heard the Landlord call the Tenant names and estimated that they have had over 100 days of harassment over the years.

The witness stated that the Landlord has been seen dumping garbage on their property including when the unusable fridge and stove were left on the property for weeks. The witness stated that neighbours have seen the Landlord leaving garbage.

Analysis

Based on the relevant testimony and evidence before me, I find as follows regarding each of the Tenant's claims:

Regarding the Tenant's claim to restrict or suspend the Landlord's right to enter, I refer to Section 29 of the *Act* which outlines the process for a landlord to provide notice to enter the rental unit. While it does not seem that the Landlord is entering the rental unit without authorization to do so, I accept the testimony of the Tenant that the Landlord is accessing the residential property without cause and providing numerous notices to enter the rental unit with unreasonable hours of access.

In a previous decision dated June 29, 2019, the following agreement was noted:

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.

Therefore, I remind the parties of this arrangement such that the Landlord will provide 24 hour written notice for a third party to enter the rental unit for the purpose of repairs in accordance with Section 29 of the *Act*. **The Landlord is not to enter the rental unit.**

Regarding access to the residential property, I do not find that the Landlord would have reason to be on the property without notification to the Tenant first, given that the Tenant stated that the Landlord does not live on the same residential property. However, although I do not find that Section 29 of the *Act* references access to the property other than entry to the rental unit, I do find that a tenant is entitled to quiet enjoyment as per Section 28 of the *Act*.

A right to quiet enjoyment includes reasonable privacy and freedom from unreasonable disturbance. Therefore, I warn the Landlord that unreasonable access to the residential property may be considered a breach of the Tenant's right to quiet enjoyment, particularly if entry onto the property is used to look into the Tenant's windows or other such invasion of privacy. **The Landlord is not to enter the rental unit or be on the residential property unless an emergency exists and the entry to the unit or property is necessary to protect life or property.**

Regarding the Tenant's monetary claims, which includes the Tenant's request for a reduction in rent, the Tenant applied for a total of \$8,040.99. For loss of quiet enjoyment and harassment the Tenant applied for \$1,319.85. As stated in Section 7 of the *Act* when a party is in breach of the *Act*, they must compensate the other party for any losses that occur as a result.

In order to determine if compensation is due, the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* provides further clarification on determining if compensation is due through a four-part test as follows:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 28 of the *Act* states that a tenant has the right to quiet enjoyment. As stated, I accept the Tenant's testimony that the Landlord has accessed the residential property without reason to do so and causes concern for the Tenant by doing so.

However, regarding the claims of harassment, I am not satisfied that the Tenant has established that she is being harassed by the Landlord. Although the Tenant submitted photos of damage to her car and foul language written on her door, I do not find sufficient evidence to determine that these incidents were caused by the Landlord. I also do not find that issues such as these would fall under the residential tenancy legislation and instead find that the Tenant should involve the police should she have concerns of vandalism or harassment.

The Tenant stated that 50% of her day is spent dealing with harassment and loss of quiet enjoyment and calculated this out to the amount of \$1,319.85 as claimed. However, as stated above, a party claiming a loss must prove the value of their loss. In this matter, I do not find sufficient evidence to be satisfied that the Tenant spends 50% of her day dealing with harassment or loss of quiet enjoyment such that she should be reimbursed in this amount.

I am also not satisfied that the Tenant has lost 25% enjoyment of the rental unit such that half of the claim for the loss of quiet enjoyment should be awarded. While I accept that the Landlord may have intruded on the Tenant's privacy through unreasonable entry onto the property, I am not satisfied as to the value of this loss for the Tenant. Instead, I find insufficient evidence before me to establish the value of the loss, such as a record of when this has occurred such that it could be established how often this is occurring.

Instead, I find that the Landlord has now been cautioned regarding unauthorized access to the rental unit and residential property which may be leading to loss of quiet enjoyment. As the Tenant has not met the four-part test and I am not satisfied as to the claims of harassment or the amount claimed, I decline to award compensation for this claim and instead I dismiss the claim without leave to reapply.

As for the Tenant's claim for \$2,700.00 for a rent reduction, the Tenant stated her position that the Landlord should be paying her an additional \$50.00 per month beginning in February 2019 after the Tenant's rent went to \$0. However, upon review of the previous decisions that referenced the awarded rent reduction, I do not find that it was ordered that the rent would reduce beyond \$0.

Instead, I find that the Tenant is not paying any monthly rent due to the previous orders and that no further rent reduction has been awarded. Through the previous decisions the Landlord has been notified of this rent reduction due to repairs not being completed

and is also aware of the process for having the rent return to the normal amount through an application for Dispute Resolution.

Therefore, I find that the previously ordered progressive rent reduction is in place and that rent has not been ordered to be reduced beyond \$0. I dismiss this claim, without leave to reapply.

The Tenant also applied for compensation in the amount of \$4,021.14 for repairs not being completed. The Tenant has claimed 15% of the daily rent amount since 2017 when the repairs were first ordered to be completed. However, I find this matter to be *res judicata* in that the claim has already been previously decided on and therefore cannot be decided upon again. As stated, the Tenant was previously ordered to a progressive rent reduction due to the repairs not being completed and is currently paying \$0 in monthly rent as compensation for the repairs.

As stated, a party claiming a loss must establish the value of the loss. As the Tenant has applied for compensation from 2017, I find that compensation has already been provided in the form of a rent reduction. Therefore, I do not find that I can award further compensation for the repairs not being completed as the Tenant is currently being compensated at \$880.00 per month; compensation that still remains in place currently. Therefore, I decline to make further findings on compensation for repairs.

The Tenant's monetary claims are dismissed, without leave to reapply. However, the Landlord is cautioned that the Tenant may find cause to seek further compensation in the future or to seek compensation for aggravated damages.

Regarding Tenant's application for repairs to be completed, which includes the Tenant's application for the Landlord to comply, the Tenant stated that their request is for additional repairs to be completed as well as repairs that are a result of the initial repairs not being completed. This includes a deep cleaning/sanitizing of the rental unit due to the rat infestation, painting, cupboard and floor replacement, repairs or replacement of the washer, dryer and hot water tank, and a new fridge and stove.

The Tenant submitted photos of various areas of the rental unit which show areas of disrepair including holes in the walls and kitchen countertops, what appears to be a rusting/rotting area on top of the hot water tank and a dirty stove. As stated, I cannot make findings on issues which have previously been decided upon and as such, I

decline to make any findings on the following repairs for which the Landlord has already been ordered to complete:

- Three electrical outlets in the living room
- Two electrical outlets in the kitchen
- Three elements on the stove
- The stove oven
- Back door
- Rat infestation and rat holes
- Bathroom shower leak
- Dryer vent

Therefore, regarding the additional repairs requested, I refer to Section 32 of the *Act*, in particular Section 32(1) which states the following:

- 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.

However, I also find that a landlord cannot make repairs to the rental unit if they are not aware of the need for repairs. In this matter, I do not find sufficient evidence from the Tenant to establish that she has notified the Landlord of the need for new cupboards or new flooring due to the age of the items. Should these items need repairing or replacing, I suggest that the Tenant put her concerns in writing to the Landlord.

However, upon review of the previous decisions submitted by the Tenant as well as the current evidence submissions from the Tenant, I do find that there may be issues with the hot water tank, working fridge, stove, washer and dryer, and kitchen countertop. I also accept that the rental unit likely needs a thorough cleaning due to the presence of rodents.

As the Landlord was previously ordered to deal with the rat infestation issue, I find that part of dealing with the rats involves cleaning up the areas that have been infested by rats which includes cleaning of rat feces, urine and rat hair, repairs of holes caused by rats and repair of items that have been chewed on by rats. I accept the Tenant's testimony that the issues with the rats have become increasingly worse given that the initial infestation was not dealt with and therefore find that the issue is magnified beyond what it was noted as in previous decisions.

Therefore, in addition to the previous order for the Landlord to deal with the rat infestation and rat holes, the Landlord is also ordered to have a professional attend the rental unit to clean and sanitize the areas of the rental unit that have been affected by the presence of rat urine and rat feces.

The Landlord is also ordered to have professionals attend the home to assess the need for a working hot water tank, fridge, stove, washer, dryer, and kitchen countertop. The professionals are to assess whether these items can be repaired or need to be replaced. If found to not be in good working order, repair or replacement of these appliances must be completed no later than December 15, 2019.

Conclusion

As previously agreed upon, the Landlord is ordered to provide 24 hour written notice for a third party to enter the rental unit for the purpose of repairs in accordance with Section 29 of the *Act*.

The Landlord is cautioned that unreasonable entry to the residential property may be found to be disrupting the Tenant's right to quiet enjoyment. **The Landlord is ordered to not to enter the rental unit or be on the residential property unless an emergency exists and the entry to the unit or property is necessary to protect life or property.**

The Landlord has been previously ordered to have pest control professionals attend the rental unit to deal with the rodent infestation and this order remains. However, due to the additional issues caused by the presence of rats, the Landlord must also have professionals clean and deal with any residual damage or issues caused by the rats. **The Landlord is ordered to have a pest control company attend the rental unit by**

December 15, 2019 and conduct necessary treatment, repairs and clean up related to the presence of rodents.

By December 15, 2019, the Landlord is ordered to have the hot water tank, fridge, stove, washer, dryer, and kitchen countertop assessed by professionals to determine if repair or replacement is needed and to ensure they are in good working order by this date.

The remainder of 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: November 28, 2019

Residential Tenancy Branch