



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, OLC, MNRT, MNDCT

Introduction

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

- a Monetary Order for the cost of emergency repairs, pursuant to section 33;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70; and
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:51 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. Tenant A.B. (the "tenant") and his counsel attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and his counsel and I were the only ones who had called into this teleconference.

The tenant testified that the landlord was served with his application for dispute resolution on October 13, 2019 via registered mail. A Canada Post registered mail receipts evidencing the above mailing was entered into evidence. I find that the landlord was deemed served with the above package on October 18, 2019, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue- Amendment

The tenant testified that the landlord was served with his amendment and attached monetary worksheet via registered mail on October 18, 2019. A Canada Post registered mail receipt was entered into evidence to prove the above mailing. The tenant's amendment adds a monetary claim for damage or compensation pursuant to section 67 of the *Act*, in the amount of \$2,931.39.

I find that the landlord was deemed served with the tenant's amendment and monetary worksheet on October 23, 2019, pursuant to sections 88 and 90 of the *Act*.

Preliminary Issue- Evidence

During the hearing counsel for the tenant submitted that this in the sixth hearing (including an application for review consideration) to take place between the tenants and the landlord at the subject rental property. The six decisions in there entirely were not entered into evidence; however the tenant did enter excerpts from two of the previous decisions. At the hearing counsel for the tenant submitted that she had all six previous decisions before her and could read them in during the course of the hearing.

I allowed the tenant's counsel to upload copies of the previous decisions during the hearing and admitted them into evidence rather than having tenant's counsel read them in. I find that the admission of the previous decisions into evidence does not prejudice the landlord as the landlord should already have copies of the previous decisions and would more likely than not, have had an opportunity to review them.

The file numbers for the previous decisions are on the cover page of this decision.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for the cost of emergency repairs, pursuant to section 33 of the *Act*?
2. Are the tenants entitled to an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70 of the *Act*?
3. Are the tenants entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
4. Are the tenants entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act* of the *Act*?

Background and Evidence

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

The tenant provided the following undisputed testimony. This tenancy began on June 1, 2012 and is currently ongoing. Monthly rent in the amount of \$1,050.00 is payable on the first day of each month, pursuant to the August 29, 2016 decision. A security deposit of \$625.00 was paid by the tenants to the landlord.

The first decision between the parties at the subject rental address is dated August 29, 2016. In that hearing the tenant applied for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated June 30, 2016 (the "Two Month Notice"), pursuant to section 49;
- a monetary order for money owed or compensation for damage or loss under the Act, Residential Tenancy Regulation ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to make emergency and regular repairs to the rental unit, pursuant to section 33; and
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The following Orders were made in the August 29, 2016 decision:

- the Two Month Notice was cancelled.
- the landlord was ordered to fix the bathroom faucet and provide pest control services. If the above were not completed by September 16, 2016, the tenants were permitted to deduct \$200.00 per month from their monthly rent of \$1,250.00 until the above repairs were made.
- The tenants were granted a monetary award for repairs made to the rental unit which the landlord was responsible for.
- The tenants' claim for a monetary order for damage or compensation was dismissed.

The landlord applied for a Review Consideration of the August 29, 2016 decision which was dismissed in a Review Consideration Decision dated August 16, 2016.

The second decision between the parties is dated April 05, 2018. In the hearing the tenants applied to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice"). In that decision, the Two Month Notice was cancelled because it did not meet the form and content requirements of section 52 of the *Act*.

The third decision between the parties is dated May 13, 2019. In the hearing the tenants applied to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice"). The Two Month Notice was cancelled because the landlord failed to establish on a balance of probabilities that the tenancy should end for the reason provided on the Two Month Notice.

The fourth decision between the parties is dated August 22, 2019. In that hearing tenant A.B. applied to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the "Four Month Notice", and for an Order for the Landlord to comply with the *Act*, Residential Tenancy Regulation (the "Regulation") and/or tenancy agreement.

In the August 22, 2019 decision the Four Month Notice was cancelled because the landlord failed to establish that he had the necessary permits and approvals required and did not establish that he did not need them or was unable to obtain them prior to the rental unit being empty. The tenant's application for an Order for the landlord to comply with the *Act* was dismissed due to lack of evidence.

Order for the Landlord to Comply with the Act

The tenant testified that he attended at the landlord's office on August 27, 2019 to pay rent for September and October 2019. The tenant testified that when he attended, the landlord demanded that he pay rent in the amount of \$2,500.00 per month for all rent going forward and provided him with a letter demanding same. The landlord's signed demand for increased rent dated August 26, 2019 was entered into evidence. The tenant testified that he handed the landlord his September and October 2019 cheques

in the amount of \$1,050.00 per month and that the landlord called him a “mother fucker” and ripped them up and threw them at the tenant.

The tenant testified that he and tenant N.B. attended at the landlord’s office on October 31, 2019 and gave the landlord’s secretary their November 2019 rent cheque. The tenants then left the landlord’s office and the landlord’s secretary followed them outside and threw the cheque back at the tenants and told them that the landlord would not accept the tenants’ rent cheque. The tenant testified that he has paid his rent by leaving a rent cheque with the landlord’s secretary since the landlord purchased the subject rental property in 2015.

Counsel for the tenant submitted that the tenant is seeking an Order that the demand for rent in the amount of \$2,500.00 does not comply with the rent increase restrictions imposed by the *Act* and is therefore not enforceable.

Order Restricting the Landlord’s Right to Enter/ Compensation for Cost of Emergency Repairs

The tenant testified that on September 4, 2019 the landlord and three workers attended at the subject rental property to complete an inspection. The tenant testified that he was waiting outside the subject rental property for the landlord and when the landlord arrived, he said “open the door you mother fucker”. The tenant testified that he opened the door and allowed the landlord access, however once inside the landlord continued to swear at the tenant and tenant N.B. The tenant testified that he then asked the landlord to leave as the language he was using was offensive.

The tenant testified that the landlord walked outside of the subject rental property and continued to swear at the tenants and again demanded the tenants pay \$2,500.00 per month or else they would be thrown out by September 15, 2019. The tenant testified that the landlord told them that he did not care what orders the Residential Tenancy Branch made, and that the Residential Tenancy Branch will not tell him how much the rent should be. The tenant testified that the landlord then walked up to the front door and kicked it open, breaking the door frame and lock. The tenant testified that he then asked the landlord if he would have his workers repair the door and the landlord said “no”. The tenant testified that he then called the RCMP but the landlord was gone before the RCMP arrived. The tenant entered into evidence the police file number for

the above incident and a receipt from a locksmith in the amount of \$204.75 for the lock repair.

The tenant testified that approximately 18 months ago, after the landlord received one of the previous decisions, the landlord attempted to strangle the tenant. The tenant testified that he was able to move out of the way and the landlord's hand made contact with his chest, but he did not call the police because he was not injured.

Counsel for the tenant submitted that due to the above altercations, the tenants are seeking an Order for the landlord to not be permitted on the subject rental property.

The tenant testified to the following facts. In the beginning of September 2019, the landlord arranged for a plumber to attend at the subject rental property on September 19, 2019 to repair the leaky taps in the bathtub. The tenant testified that two plumbers attended at the subject rental property on September 19, 2019 at 5:30 p.m. The plumbers turned off the water to the entire subject rental property and dismantled the taps. The plumbers informed the tenants that they needed to go and get a part and would be back at the subject rental property by 7 p.m. The plumbers did not return on September 19, 2019. Every day the tenant called the landlord asking for an update on when the water would be turned on and the bathroom taps put back together, and each day the landlord promised that the work would soon be completed.

The tenant testified to the following facts. On September 21, 2019 the tenants called the landlord and informed him that they could not continue to live without water and that they would need to stay at a hotel. The landlord agreed that the tenants could stay at a nearby hotel and that the cost of the hotel could be deducted from rent. A letter dated September 21, 2019 from the landlord to the tenant was entered into evidence and states:

Further to our various text and phone conversations with respect to the water leakage in the washroom, and as discussed over the phone, I have retained a plumber to fix the water leakage issue at the property.

As you know the plumber attended at the property on September 19, 2019. I am advised by the plumber that one of the parts of the tub faucet needs to be replaced and that the replacement part is not available right away.... The plumber advises me that it may take 4-5 days until he could get the new part and might take even longer to fix this persisting problem as I was advised to

change the entire plumbing of the house to fully take care of this problem for good.

I suggest that you seek accommodation in a reasonable motel/hotel for the said number of days or I can even arrange accommodation for you at [address of accommodation] in case we need to change the entire plumbing for the house but if your decide to stay in motel/hotel you may deduct the amount from this month's rent which is still due.

The tenant testified that he called one hotel on September 21, 2019 but that it was full and so he and tenant N.B. decided to stay at the subject rental property and order in food as they could not cook due to lack of water. In the evening of September 21, 2019, the tenant called the landlord and advised that if the landlord did not restore his water by 1:00 p.m. the following day, the tenant would hire his own plumber. The tenant testified that his water was still off at 1:00 p.m. on September 22, 2019 so he hired a plumber who attended the same day, fixed the bathroom taps and turned on the water. The tenant entered into evidence a plumbing receipt dated September 22, 2019 in the amount of \$950.00.

The tenant testified that the landlord did not address the rodent problem at the subject rental property pursuant to the August 29, 2016 decision and that he had to purchase more rat traps to combat the problem. The tenant entered into evidence a photograph of rats and a receipt for rat traps in the amount of \$46.81.

The tenant testified that he did not provide the landlord with a copy of the receipts for the locksmith, the plumber and the rat traps prior to his application for dispute resolution. The tenant testified that the landlord received the above receipts when he served the landlord with his evidence package for this hearing.

Monetary Order for Damage and Compensation

The tenant testified that he ordered take out on September 20, 2019 in the amount of \$54.44 and on September 22, 2019 at 8:24 p.m. in the amount of \$75.39. Receipts for both meals were entered into evidence.

Counsel for the tenant submitted that the above expenses were incurred by the landlord because the landlord failed to maintain the subject rental property. Counsel submitted

that the tenant is seeking the landlord to reimburse him for the cost of the takeout meals.

Counsel for the tenant submitted that the tenant is seeking \$600.00 for loss of quiet enjoyment of the subject rental property for the four days the tenants did not have water at the subject rental property. No submissions regarding how the \$600.00 figure was arrived at were provided.

Counsel for the tenant submitted that the landlord delayed the repair of the bathroom taps at the subject rental property in an intentional effort to inconvenience and upset the tenants. Counsel submitted that the landlord's September 21, 2019 letter was provided to the tenant to make it look like the landlord was acting reasonably, when he was not. The tenant testified that the address provided by the landlord as possible accommodation on the September 21, 2019 letter was not a real hotel.

The tenant testified that the landlord has failed to make the repairs ordered in the August 29, 2016 decision, has issued multiple unsupported notices to end tenancy and uses vulgar language in all interactions with the tenants. Counsel for the tenant submitted that the tenant is seeking \$1,000.00 for loss of quiet enjoyment pursuant to the above. No submissions regarding how the \$1,000.00 figure was arrived at were provided.

Counsel for the tenant submitted that the landlord's aggressive behavior warrants an administrative penalty under section 87 of the *Act*.

Analysis

Order for the Landlord to Comply with the Act

Section 43 of the *Act* states that a landlord may only impose a rent increase up to the amount calculated in accordance with the regulations. Section 22 of the Residential Tenancy Act Regulations states that a landlord may impose a rent increase that is no greater than the percentage amount calculated as follows:

$$\text{percentage amount} = \text{inflation rate} + 2\%$$

The online Residential Tenancy Branch rent increase calculator states that the maximum rental increase on a rent of \$1,250.00 is \$32.50. I find that the Notice of Rent Increase provided by the landlord to the tenant in August of 2019 increases the rent of

the tenant over the maximum amount permitted under section 43 of the *Act*. I therefore find that the landlord's notice of rent increase is of no force or effect due to the contravention of section 43 of the *Act*.

Pursuant to section 62 of the *Act*, I Order the landlord to comply with section 43 of the *Act*.

Order Restricting the Landlord's Right to Enter

Section 29(1) of the *Act* states that 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 29(2) of the *Act* states that a landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

Section 70(1) of the *Act* states that the director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 [*landlord's right to enter rental unit restricted*].

Based on the tenant's undisputed testimony, the locksmith receipt and the police file number, I find that the landlord kicked in the door of the subject rental property. Given this act of aggression, and pursuant to sections 29 and 70 of the *Act*, I Order the landlord not to attend at the subject rental property whatsoever. Pursuant to section 70 of the *Act* I restrict the landlord's right to enter or attend at the subject rental property.

Compensation for Cost of Emergency Repairs

Section 33(5) of the *Act* states that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

I find that the tenant's application for monetary compensation for the cost of emergency repairs is premature as the tenant did not provide the landlord with copies of the receipts prior to initiating this dispute resolution proceeding. A written account of the damages and copies of the receipts provided by the tenant as part of the evidence for a dispute resolution application does not meet the requirement of a separate written notice. I therefore dismiss the tenant's application for a monetary order for the cost of emergency repairs with leave to reapply. At any future hearing, the tenant must be prepared to prove service of the tenant's written account of the emergency repairs and receipts for the amounts claimed.

Loss of Quiet Enjoyment

Section 28 of the *Act* states 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.

Residential Policy Guideline 6 states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

Section 32 of the *Act* states that the landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant.

I find that the tenant has failed to prove that the landlord breached section 28 of the *Act* in his efforts to repair the faucets at the subject rental property. The fact that the tenant was able to locate a plumber in a short time period and have that plumber repair the taps and turn on the water, does not prove that the landlord was acting inappropriately.

The letter sent by the landlord to the tenant offered to reimburse the tenants for the cost of a reasonable motel/hotel while more substantial repairs to the subject rental property were made. Whether or not the address provided by the landlord as an option for accommodation was an actual hotel is not relevant as the landlord left the option open for the tenant to choose a suitable motel/hotel.

I find that the tenant has failed to prove that the landlord breached section 28 of the *Act* regarding the leaky taps. I therefore dismiss the tenant's \$600.00 claim for loss of quiet enjoyment for four days of no water and I dismiss the tenant's claim for the cost of take out. I note that it is possible to cook certain foods with out water and that the second meal was purchased at 8:24 p.m. on September 22, 2019 which is the date the tenant testified the water was restored. I find it more likely than not that the water was restored before 8:24 p.m. when the food was ordered.

Based on the tenant's undisputed testimony I find that the landlord frequently uses profanities when interacting with the tenants, has acted aggressively and has failed to complete the repairs ordered in the August 29, 2016 decision. I find that the landlord's failure to complete the required repairs as set out in the August 29, 2016 decision has significantly disturbed and impaired the tenants' enjoyment of the subject rental property, contrary to section 28 of the *Act*.

I find that the tenants are entitled to an award of \$25.00 per month the landlord did not comply with the August 2016 repair Orders. September 2016 to November 2019 is 39 months. $39 * \$25.00 = \975.00 . Pursuant to section 67 of the *Act*, I find that the tenant is entitled to a Monetary award in the amount of \$975.00 from the landlord

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$975.00, on one occasion, from rent due to the landlord.

Conclusion

The landlord's notice of rent increase is of no force or effect.

Pursuant to section 62 of the *Act*, I Order the landlord to comply with section 43 of the *Act*.

Pursuant to section 70 of the *Act* the landlord is prohibited from attending at the subject rental property.

The tenant's application for monetary compensation for the cost of emergency repairs is dismissed with leave to reapply.

The tenants are entitled to deduct \$975.00, on one occasion, from rent due to the landlord.

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 13, 2019

Residential Tenancy Branch