



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT, OLC, OT, PSF, RR

Introduction:

The Application for Dispute Resolution filed by the Tenant(s) seeks the following:

- a. A monetary order in the sum of \$8890.
- b. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- c. An order that the landlord provide services and facilities required by the tenancy agreement or law?
- d. An order for the reduction of rent?

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail on September 26, 2019.

Preliminary Matters:

A number of preliminary matters were raised. The tenant uploaded materials a few days before the hearing stating that he was recovering from an operation and requested an adjournment. The tenant failed to serve the landlord with materials relating to this request. At the hearing the tenant stated he no longer wished an adjournment and wished to proceed at this time. The landlord agreed. I ordered that the hearing of this matter proceed.

The tenancy ended at the end of September 2019 and the tenant no longer resides in the rental unit. I determined that the claim for an order that the landlord comply with the

Act, Regulations and/ tenancy agreement and the claim for an order the landlord provide services and facilities required by the tenancy agreement or law is no longer relevant and those claims are dismissed without leave to re-apply. The parties agreed that this hearing is only dealing with the Tenant's claim for a monetary order and a reduction of rent.

There have been three previous files. The Tenant filed a claim for emergency repairs which was heard on July 29, 2019 with a decision rendered on August 7, 2019. That claim was dismissed without leave to re-apply. The tenant filed a second claim which seeking an order to cancel a one month Notice to End Tenancy, an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement, for an order requiring the landlord to make repairs to the rental unit, an order allowing a reduction in rent, and for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulations. The arbitrator ordered that the first claim proceed and the remaining claims be dismissed with leave to re-apply. The landlord's application sought an Order of Possession in the third file.

The parties reached a settlement on matters relating to the end of the tenancy and an Order of Possession was issued for September 30, 2019. I determined there was no basis for to the landlord's objection that the tenant's claims should be set aside based on the previous decision. The previous arbitrator ordered that the claim for emergency repairs be dismissed without liberty to re-apply. That case did not deal with the claims made by the tenant in these proceeding. The tenant raised his monetary claims in his second application that included a claim to cancel the Notice to End Tenancy. The arbitrator in that hearing dismissed the tenant's monetary claims with the right to re-apply.

The tenant objected to the evidence produced by the landlord testifying that he did not receive it. The address for service in the Tenant's application was the rental property. He testified he filed a change of address form with Canada Post. The tenant did not provide a forwarding address. Later he acknowledged that a notification form had been given to him but he could not pick up the materials because of his operation. Both parties wanted me to proceed with the hearing. I determined that it was necessary to hear all of the relevant evidence to make a decision on the merits and that it was not appropriate to rule that the landlord could not rely on her evidence.

Issues to be Decided:

The remaining issues to be decided are as follows:

- a. Whether the Tenant is entitled to a monetary order and if so how much?
- b. Whether the Tenant is entitled to an order for the reduction of past rent to the end of the tenancy?

Background and Evidence:

The tenancy began on December 1, 2016. The rent at the time the tenancy ended was \$820 per month payable in advance on the first day of each month.

The tenant seeks compensation in the sum \$8890 for the failure of the landlord to supply water for the period May 26, 2019 to September 15, 2019.

The Law:

Section 32 of the Residential Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

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.

Section 28 provides as follows:

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:

- (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.

Section 27 of the Act provides as follows:

Terminating or restricting services or facilities

27 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

Briefly, the relevant facts are as follows:

The rental unit and residential property was located in a rural area on top of a hill, on 10 acres, 10 kilometers outside of a small town. The landlord lives on the property and the tenant's rental unit is a small cabin located on the same property. There is also a second small cabin on the property.

The Tenant gave the following evidence:

- He was without water for the period May 26, 2019 to September 15, 2019 because the well failed.
- The landlord refused to fix the well. He has made claims totalling \$860 for gas and labour for trips to pick up water put in 25 gallon jugs which he added to the cistern.
- The tenant testified to bring up water for his own use for other purposes, such as watering, washing dishes and flushing toilets, but that the landlord forbid him to add the water to the well reservoir.
- The tenant testified that the landlord put up a no-trespassing sign. She then chained a large guard dog to the cistern to prevent him from accessing it. The RCMP were called.
- That for the 4 month period his enjoyment of the property was reduced particulars of are as follows:
 - he was unable to wash dishes properly,
 - He was unable to take showers.
 - The water was used to flush toilets

- His personal hygiene suffered.
- Several months ago the water was cut off for a week and the landlord agreed to a \$200 rent reduction for the week.
- The tenant submitted that the landlord failed to do anything the well although she had a well technician called to fix the well. The tenant submitted another option is a water service truck holding 4000 gallons of water.
- The tenant said the landlord has served an eviction notice
- The tenant further writes that he had spoken to a previous tenant from five years ago, who verified even then the current well was barely supplying water at that time.
- The tenant testified that the tenant in the other cabin on the property was successful in her application and the arbitrator ordered the landlord repair the well by early September and ordered that she be compensated for one half of the rent (her rent was \$400 a month) for the period she was without water plus \$50 nominal damages for breach of the covenant of quiet enjoyment for a total of \$670.

The landlord gave the following evidence:

- The landlord testified that for the entire length of the tenancy, the water situation has been precarious. The landlord submitted the 32 year old well failed at the end of March 2019 and has completely stopped producing water and there is no available district water supply.
- The landlord submitted that she does not have useable water herself, as she often washes her clothes and takes showers at friends' houses. The landlord said she brings up her drinking water separately in her vehicle.
- In the previous hearing dealing with the tenant's application for emergency repairs the landlord presented evidence dealing with the landlord's effort to repair the well.
- The landlord testified that the tenant has been packing water to irrigate his marijuana "Grow Op".
- The landlord submitted that her friend went to check on her property while she was away, and he discovered that the tenant had put locks on the front gates.

- The landlord submitted that she is now faced with installing a whole new system for her house and the two cabins, as the well is leaking, and not repairable.
- The landlord testified that the tenant has exhibited ongoing anger vengeful behavior, intimidation, threats and harassment.
- She made every effort to comply with the order from the arbitration dealing with the other tenant. However, the tenant in this hearing interfered with the work of the plumbing company and refused to proceed because of the “hostile environment.”

In a decision rendered August 7, 2019 the arbitrator dismissed the tenant’s application for emergency repairs. The relevant provisions of that decision include the following:

“Analysis

“In this case, the tenant said that this issue has been ongoing for 65 days. I find this evidence demonstrates that the water issue is not urgent.

I also am not convinced that the tenant would have made this application for an expedited hearing, had he not been served with the landlord’s One Month Notice, which further substantiates that the matter was not urgent. I make this determination due to the repeated references to the One Month Notice made by the tenant in his written evidence.

I also considered that the tenant is aware that the water supply has never been supplied in a traditional manner, as he has brought up his own water since the beginning of the tenancy.

I find the landlord submitted sufficient evidence to demonstrate that she has addressed the matter of water, through her receipts and statements from the well company and a water supply company.

Given the rural, remote location of the rental unit, the lack of access to the residential property, and the ongoing nature of the tenancy which has never had an adequate supply of water, causing the tenant to carry his own water, along with the fact the tenancy is ending no later than September 30, 2019, I decline to order the landlord to make emergency repairs.

Additionally, as I have found that the tenant has not proven the repairs mentioned in his application were urgent, I dismiss his application seeking an order requiring the landlord to make emergency repairs to the rental unit, without leave to reapply.

Conclusion

The tenant's application is dismissed, without leave to reapply."

Analysis

The landlord testified her relatives began supplying water to the cistern on September 1, 2019 and thus the tenant is not entitled to compensation for September. I determined the landlord failed to provide sufficient proof to establish this defense. .

The full rent for the 4 months the tenant was without water would amount to just under \$3300. The tenant has claims that total over \$8800 for this period. I determined many of the claims brought by the tenant if awarded would amount to double recovery. Many of the other claims are not supported by the evidence and do not provide a legal basis for recovery. With regard to each of the claims set out in the monetary order worksheet filed by the Tenant I find as follows:

- a. I dismissed the tenant's application in the sum of \$5040 for the lack of peaceful enjoyment of the premises. I determined the tenant failed to provide sufficient evidence to prove that the landlord breach the Act in failing to provide reasonable privacy; unreasonably disturbed the tenants, interfered with the tenant's exclusive possession of the property or interfered with the use of the common areas for a reasonable and lawful purpose. While the tenant is entitled to compensation for the lack of water, I determined there is insufficient proof to establish that the landlord breached the covenant of quiet enjoyment.
- b. The monetary order worksheet filed by the tenant makes four claims that \$790 for the labour and gas cost incurred by the tenant to obtain water from a different location and fill the cistern for an approximate 3 week period in June. The landlord did not agree to pay the tenant for this. When she became aware of this she objected and took steps to prevent the tenant from doing this. The previous decision determined that the lack of water did not amount to an emergency basis. The tenant failed to make an emergency application at the time and only did so

after he was served with a Notice to End the Tenancy. I determined the tenant failed to provide a legal basis for compensation

- c. I determined the Tenant was without water for the period May 26, 2019 to September 19, 2019. I determined that this amounts to a significant reduction in the enjoyment of the property and that the tenant is entitled to compensation in the sum of \$800 for this period for the following reasons:
 - a. The loss of water is a significant loss of an important part of what was bargained for and the tenant is entitled to a reduction of rent for the period retroactively.
 - b. I do not accept the submission of the tenant that he is entitled to reimbursement of all of the rent for that period of time. The tenant got significant value living in the property even though the water dried up.
 - c. I note that the arbitrator in the previous arbitration dealing with the other tenant on the property granted a reduction of rent of \$200 a month. While that decision does not bind me I find it helpful. In that case the rent was only \$400. However, an arbitrator only has jurisdiction to compensate a tenant and not to award punitive damages. The tenant failed to produce sufficient evidence to prove that his loss was greater than the other tenant.

In summary I determined the Tenant has established a claim against the landlord in the sum of \$800.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$800.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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: December 09, 2019

Residential Tenancy Branch