



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, MNDCT, MNRT, OT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

JB represented the tenant in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

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

As the tenant confirmed receipt of the 10 Day Notice dated February 13, 2020, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

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

Is the tenant entitled to an order for the landlord to comply with the *Act*.

Background and Evidence

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

This month-to-month tenancy began in June of 2012. The current landlord purchased the property in August of 2015. The monthly rent is set at \$1,250.00, which has been reduced to \$1,050.00 per a \$200.00 monthly rent reduction granted by the Arbitrator in the decision dated August 29, 2016. A security deposit in the amount of \$625.00 was collected, which the landlord still holds.

The landlord served the tenant with a 10 Day Notice for Unpaid rent dated February 13, 2020 for failing to pay \$7,500.00 in unpaid rent as of September 2019. The tenant is disputing this 10 Day Notice.

The tenant testified that he has made repeated attempts to pay rent to the landlord, but the landlord has refused payment from him. The tenant submitted several recordings documenting his attempts. The landlord disputes the credibility of these recordings, and the tenant's testimony, and argues that they cannot be relied on.

The landlord submits that the tenant has provided fraudulent testimony and evidence, and submitted court cases to which the tenant is a party to. The tenant responded that one of the cases involves a different party who is not him, and another case is still outstanding. The tenant argued that these cases are unrelated to this matter, and does not sufficiently support the landlord's case against him for unpaid rent.

The tenant testified that this is the seventh attempt by the landlord to end this tenancy. The tenant provided copies of the six previous decisions which involve previous notices to end tenancy issued by the landlord. Each Notice to End Tenancy was cancelled by the Arbitrator.

In addition to the application to cancel the 10 day Notice, the tenant has applied for an order enforcing the order made by the Arbitrator in the decision dated November 13, 2019, which prohibits the landlord from attending on the property. The tenant submits that the landlord continues to attend the property, and has done so at least twice since the order was made.

The tenant is also applying for the following monetary orders:

Item	Amount
Loss of Quiet Enjoyment	\$2,500.00
Reimbursement for rat traps	46.81
Reimbursement for lock repairs	204.75
Reimbursement for plumbing repairs	950.00
Total Monetary Order Requested	\$3,701.56

The tenant is seeking compensation in the amount of \$2,500.00 for the loss of quiet enjoyment as a result of the landlord's repeated harassment of the tenant by disregarding previous orders by Arbitrators to perform repairs, disregarding orders to not attend on the property, and causing undue hardship and stress by the repeated issuance notices to end tenancy in bad faith. The tenant is also seeking an administrative penalty of up to \$5,000.00 pursuant to section 87.3 of the *Act* for the landlord's failure to comply with previous orders.

The tenant is applying for reimbursement of repairs undertaken by the tenant. The tenant submits that he had to hire a locksmith after the landlord had damaged the door and lock on September 4, 2019. After repeated, unsuccessful requests, the tenant undertook the repairs himself at the cost of \$204.75. Under the same section, the tenant is applying for reimbursement for plumbing repairs in the amount of \$950.00. The tenant submits that the landlord failed to undertake the repairs in a timely manner, and after 4 days without running water, and a reasonable explanation, the tenant undertook the repairs himself. The tenant testified that he compared different plumbers, and mitigated the losses by going with the least expensive option. The tenant submitted the letter sent by his counsel for reimbursement of the repairs.

The landlord testified that the tenant failed to wait a reasonable amount of time before undertaking the plumbing repairs. The landlord submits that he wanted to perform proper repairs, and had to wait for parts. The landlord testified that the claims are excessive, and disputing the tenant's monetary claim for reimbursement. The landlord wrote in his submissions that he suspects that the tenant "may possibly have pumped up the invoice on paper and tried to make a quick buck off us".

The landlord also disputes that he is flexible enough to kick high enough to break down the door, and therefore is not responsible for reimbursing the tenant.

Lastly, the tenant is seeking reimbursement for the rat traps he had purchased in the amount of \$46.81. The tenant submits that the Arbitrator ordered the landlord to deal with the rodent infestation in her decision dated August 29, 2016. The order *states “I further order the landlord to inspect the rental unit and to provide pest control to get rid of the rats in the rental unit. I order the landlord to complete the above repairs by September 16, 2016. If the landlord does not complete the above inspection and repairs by September 16, 2016, I order the tenants to deduct \$200.00 from their monthly rent beginning on the first day of the following month, until the repairs are completed”*.

Despite that decision, and repeated requests by the tenant, the landlord has failed to deal with the matter. As a result, the tenant has had to repeatedly purchase more rat traps. The landlord is disputing the claim, stating that the tenant has a duty to maintain the cleanliness of the property, which has contributed to the rodent issue.

The landlord submits that the tenant has caused him financial hardship, and is the one who is profiting off of him.

Analysis

Landlord's notice: non-payment of rent

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 26 of the *Act* requires that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.” I find the tenant had provided sufficient evidence to support that he had made repeated attempts to pay the rent to the landlord, which was refused by the landlord. Despite the landlord’s claims that the tenant’s testimony and evidence are fraudulent, I find that this claim is insufficiently supported by evidence.

I find that the landlord has refused repeatedly refused to accept the tenant’s rent payments. Based on these circumstances I am allowing the tenant’s application to cancel the 10 Day Notice dated February 13, 2020, and this tenancy is to continue as per the *Act*.

The tenant has applied for an order enforcing an order made by a previous Arbitrator to not attend on the property. As this order has already been made, I remind the landlord

of their obligation to comply with any orders previously made. Failure to do so could mean the application of an administrative penalty under section 87.3 of the *Act*.

The tenant applied for compensation for the rat traps purchased. I note that in the Arbitrator's decision dated August 29, 2016, the landlord was ordered to comply with the order for repairs by September 16, 2016, or the tenant may be allowed a rent reduction in the amount of \$200.00 per month until the repairs are complete. Although I accept the testimony of the tenant that the landlord has yet to comply with the repair order, I find that the tenant has already been compensated in the form of a rent reduction for the landlord's non-compliance. Accordingly, I dismiss this portion of the tenant's application for \$46.81 without leave to reapply.

Section 33 of the *Act* states the following in regards to emergency repairs:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system...
 - (v) the electrical systems....

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs...

(5) 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.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b)...

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

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

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

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

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

I accept the testimony of the tenant that they were without running water for several days. Although the landlord provided an explanation for the delay, I find the delay and explanation to be unjustified. I find that the landlord was aware of the tenant's requests for repairs to the plumbing, and the tenant had no choice but to undertake the repair themselves. I find that the tenant supported the value of the loss claimed. Despite the landlord's allegations that the tenant "may possibly have pumped up the invoice on

paper and tried to make a quick buck off us”, this allegation is insufficiently supported by evidence. Although the landlord testified that they wanted the time to perform the repair properly, I find that the landlord disregarded the urgency of the matter. Furthermore, the tenant was able to undertake the repairs themselves in a timely manner, which supports the fact that the delay was not justified. I find that the tenant provided documented proof that he had provided the landlord a request for the reimbursement of this repair, but the landlord has failed to compensate the tenant for it. Accordingly, I allow the tenant a monetary order in the amount of \$950.00 for the plumbing repairs.

The tenant also applied for reimbursement for the cost of repairing the door and lock. In light of the disputed testimony, I am not satisfied that the tenant had provided sufficient evidence to support that the damage was caused by the landlord. Accordingly, this portion of the monetary claim is dismissed without leave to reapply.

Lastly, the tenant made a monetary claim in the amount of \$2,500.00 for loss of quiet enjoyment for this tenancy. 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 or 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 a balance of probabilities, that the landlord caused him the loss and the amount of such loss.

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

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

highhanded. The damage must also be reasonably foreseeable that the breach or negligence would cause the distress claimed.

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

The tenant requested \$2,500.00 in their claim. I find that the tenant has failed to establish how this amount was obtained, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the damages the tenant is seeking in this application. On this basis I dismiss the tenant's monetary claim for loss of quiet enjoyment.

The tenant's counsel also requested that an administrative penalty be considered under section 87.3 of the *Act*. Although the landlord has repeatedly issued the tenant several notices to end tenancy under different sections of the *Act*, I am not satisfied that the landlord had contravened the *Act* or tenancy agreement in the issuance of these Notices to End Tenancy. However, I find the tenant has provided sufficient evidence to show that the landlord continues to disregard orders made by Arbitrators during this tenancy. I find that the landlord has shown a complete lack of regard for the multiple orders made. I find the landlord's non-compliance to be aggravated by the fact that the first order was made over three and half years ago, on August 29, 2016, for the landlord to perform repairs, and the landlord has not provided sufficient evidence to support compliance with this order. I find that the landlord continues to disregard orders made, such as the order made on November 13, 2019, which restricts the landlord from attending the rental property.

As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, and pursuant to section 87.3 of the *Act*, I award the tenant a monetary order in the amount of \$1,000.00 for the landlord's continued disregard for Orders made under the *Act*

In order to implement the monetary awards granted in this application, I order the tenant to reduce his future monthly rent payment until the full amount is paid.

Conclusion

I allow the tenants' application to cancel the 10 Day Notice To End Tenancy. The 10 Day Notice of February 13, 2020 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I issue a monetary order in the tenant's favour in the amount of \$1,950.00 against the landlord. In order to implement the monetary awards granted in this application, I order the tenant to reduce his future monthly rent payment until the full amount is paid.

Item	Amount
Administrative Penalty under section 87.3 of the <i>Act</i>	\$1,000.00
Reimbursement for plumbing repairs	950.00
Total Monetary Order	\$1,950.00

The remaining portion of the tenant's application is 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: April 9, 2020

Residential Tenancy Branch