



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNRT, PSF, RR, LRE, RP, OLC, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to carry out repairs pursuant to section 32;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 62(3);
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order to restrict or suspend the landlord's right of entry pursuant to section 70;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant AG attended for the tenants ("the tenant"). CW attended as agent for the landlord. CW testified that the landlord was out of the country, that he was a property manager, and he was representing the landlord. CW is referred to as "the landlord".

Both parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. The tenant acknowledged receipt of the landlord's materials. Neither party raised issues of service. I find the tenant served the landlord in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the following:

- An order requiring the landlord to carry out repairs pursuant to section 32;
- An order requiring the landlord to comply with the *Act* pursuant to section 62;
- An order requiring the landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 62(3);
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order to restrict or suspend the landlord's right of entry pursuant to section 70;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The parties agreed as follows. The tenancy began in November 2012. Monthly rent of \$1,768.00 is currently payable on the first of the month. The tenant provided a security deposit of \$850.00 which the landlord holds. The landlord submitted a copy of the signed tenancy agreement.

The tenant explained that the unit is a “carriage house”, one of two structures on an acre of land where she lives with her partner. Until recently, the other building on the property, a residential home, was occupied by the landlord’s parents.

During the hearing, the landlord agreed to the following which is incorporated into this Decision:

1. The landlord shall reimburse the tenant within 30 days for repairs of the kitchen faucet in the amount of \$179.05;
2. The landlord shall provide the tenant within 30 days with a water hose splitter and water hose of adequate length to allow the tenant access to water at the front of the unit;
3. Within thirty days, the landlord shall install a key pad by the garage entrance and install a functioning keypad in the master bedroom;
4. The landlord shall forthwith advise the present occupants of the other building on the property shared with the unit that the walkway by the unit is private to the tenant.

The tenant’s claim is for compensation of loss of quiet enjoyment in the amount of 30% of rent paid since the beginning of the tenancy. The tenant testified extensively in a lengthy hearing of over two hours and submitted almost two hundred files. The tenant provided a history of the relationship between the parties. The landlord submitted substantial documentary evidence as well.

The tenant testified that the tenancy has been characterized from the beginning by the landlord misleading the tenant, failing to comply with a landlord’s obligations, refusing to repair the unit as requested, and engaging in behaviour that has continuously caused disturbance to the tenant.

The tenant’s many grievances can be grouped under certain categories. For convenience, these issues are categorized as follows: the landlord operated an unauthorized short-term rental, the landlord kept a dangerous and violent animal on the premises, the landlord failed to carry out repairs (interior and exterior faucet and fobs, for example), and the landlord issued many Notices in ongoing efforts to evict the tenant. Each is addressed.

Short-term rental

The tenant’s evidence is summarized as follows with respect to the short-term rental:

- Throughout the tenancy, the tenant has endured constant noise and disturbances from the other residence on the property, occupied by the landlord's parents;
- For example, the landlord misled the tenant at the beginning of the tenancy by assuring the tenant occupancy would be quiet;
- However, beginning shortly after they moved in, major construction took place to the other structure on the property involving heavy equipment and renovations that went on for months, seriously disturbing the tenant's peace and quiet;
- Subsequently, for a period of 17 months beginning in May 2018, the landlord carried on an unauthorized short-term rental in the other building on the property; the municipality ordered the rentals to cease and the landlord complied on October 24, 2019;
- For this 17-month period, the tenant was constantly being disturbed by the unauthorized renters; the tenant provided illustrations, some of which are described as follows:
 - Renters would arrive in the middle of the night, shining car lights into the unit and knocking on the tenant's door looking for the rental accommodation;
 - Renters would congregate in the area between the unit and the other building; they would drink, smoke, talk loudly, butt cigarettes in the landscaping, and pour drinks into the tenant's plants;
 - Renters sometimes parked their cars so the tenant could not exit their parking area; the tenant stated she missed a wedding because she could not get her car out;
 - The number of renters caused excessive, "overflowing" garbage;
 - The tenant felt her right to privacy was being infringed upon;
 - On one occasion, a renter, who was inebriated from drugs or alcohol, disturbed the tenant and the tenant called the police; the tenant provided the case report number;
 - The tenant called the municipality many times until finally the municipality ordered that the short-term rental cease;
 - The tenant wrote two lengthy letters of complaint to the landlord on January 24, 2019 and July 3, 2019, copies of which were submitted as evidence; the landlord acknowledged receipt;
 - The tenant described this period of the short-term rental as "hell on earth";
 - The landlord did nothing to address the tenant's concerns;

- As a result of the landlord's indifference and inaction, the tenant felt unsafe and believed the landlord was responsible for many violations of their privacy.

The landlord acknowledged the short-term rental was for 17 months and that it was in violation of municipal law but denied that it caused the inconvenience of which the tenant complained. The landlord said the tenant was overstating what took place. The landlord said that only two 1-bedroom suites were rented in the other building and rentals only took place some, not all, of the year.

The landlord submitted many documents, an aerial photograph showing the location of the respective driveways, and uncounted texts, some of which included instructions to renters to park appropriately,

The landlord denied the tenant was entitled to compensation.

Goats

The tenant's claim for loss of quiet enjoyment included the landlord's acquisition of goats which lived on the property. The tenant testified that the goats caused serious disturbance to the tenant, the landlord knew of the tenant's loss of quiet enjoyment through frequent complaints, and the landlord was indifferent, taking no steps to alleviate the problem. The tenant provided considerable testimony and documents including pictures, the evidence being summarized as follows:

- The landlord brought two goats on the property in May 2019 which were inadequately cared for in an enclosure close to the unit resulting in the death of one goat soon after arrival;
- The remaining goat developed into a "huge, intimidating" animal, that was "violent" and strong enough on one occasion to "rip siding off the house";
- The goat was unrestrained, could "jump a four-foot fence" and made constant noise;
- The tenant and her partner were afraid of the goat, could not use the exterior area of the unit without trepidation, and hesitated to go outside;
- The tenant complained many times to the landlord, but the goat remained on the property until March 2020 when the landlord's parents vacated the other building and took the goat with them.

The landlord asserted the tenant was exaggerating the disturbance caused by the goat and said it was harmless, "like a dog". The landlord stated the tenant had no genuine or well-founded fear of the goat. The landlord denied the tenant was entitled to compensation.

Each party submitted many documents and photographs in support of their respective positions.

Repairs

The tenant also complained that the landlord repeatedly ignored the tenant's reasonable requests for maintenance of the unit. In particular, the tenant testified as follows:

- The kitchen faucet in the unit broke and the landlord ignored the tenant's request that it be fixed;
- Accordingly, the tenant contacted plumbers, arranged to order the parts and paid for the repairs;
- The tenant went without a functioning kitchen sink for 13 days and they had to use the shower for washing food and cleaning.

The landlord agreed with the tenant's version of events surrounding the faucet and provided no plausible explanation of the failure of the landlord to attend to the matter. As stated above, the landlord agreed to compensate the tenant for the cost of repairs. The tenant also claimed compensation for loss of enjoyment for the period without a working kitchen faucet. The landlord denied that the inconvenience was enough to warrant an award as requested by the tenant.

The tenant similarly complained about the inconvenience of non-functioning or poorly functioning fobs to the unit. As stated above, the landlord agreed to conduct repairs as requested by the tenant. The tenant claimed loss of quiet enjoyment for the duration of the tenancy regarding this ongoing, unaddressed issue.

In response, the landlord denied that the situation was serious enough to constitute loss of quiet enjoyment, provided no plausible explanation for the failure of the landlord to comply with the tenant's requests for repairs, and requested the tenant's claim for compensation be dismissed.

Another request by the tenant for maintenance involved a non-functioning exterior faucet. The tenant had to connect three hoses from the exterior faucet that worked in order to provide water to the front of the unit. This was awkward and inconvenient.

As stated above, the landlord has agreed to provide hoses to the tenant. However, the landlord explained that the non-functioning exterior faucet can only be fixed by removal of a wall and unreasonable repair expenses.

The tenant acknowledged that the supply of hoses by the landlord was an acceptable solution; the tenant requested compensation for loss of quiet enjoyment for the duration of the tenancy for the associated inconvenience. The landlord denied that the inconvenience to the tenant was enough to warrant a justified claim for compensation.

The tenant claimed compensation for the duration of the tenancy for these key failures by the landlord to repair, as well as many others, all of which constituted a valid claim for loss of quiet enjoyment.

The landlord denied the tenant was entitled to compensation under this heading.

The tenant submitted no evidence that there were other outstanding repair issues.

Issuing Multiple Notices to End Tenancy

The tenant claimed that the landlord engaged in an ongoing distressing pattern of attempting to evict the tenant without any cause. The tenant explained that the landlord had issued four Notices to the tenant during the tenancy, all of which involved assertions that the landlord's family intended to move in to the unit. The tenant testified that that two Notices resulted in Decisions setting them aside for lack of good faith; the Decisions were issued in June of 2017 and February of 2018 and the file numbers appear on the first page.

The tenant claimed compensation for loss of quiet enjoyment because of the multiple unfounded Notices which disturbed their peace and quiet.

The landlord acknowledged that the landlord issued the Notices but stated they were irrelevant to the tenant's application and did not constitute loss of quiet enjoyment.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below. The hearing lasted 130 minutes, included considerable conflicting testimony, and hundreds of files from the parties.

Section 7(1) of the Act provides that if a landlord does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord must compensate the tenant for damage or loss that results. The party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Section 22 of the Act deals with the tenant's right to quiet enjoyment. The section states as follows:

22 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.**

[emphasis added]

Policy Guideline 6 – Entitlement to Quiet Enjoyment provides guidance on issues that are likely to be relevant to applications under this heading.

Section 60 of the Act establishes that if damage or loss results from a tenancy agreement or the Act, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;

2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. *Policy Guideline 16 – Compensation for Damage or Loss* provides guidance on determining damage or loss and compensation.

Tenant's claim: loss of quiet enjoyment

The tenant claimed that the landlord violated her right to quiet enjoyment as follows: the landlord carried out construction without notice at the beginning of the tenancy; the landlord failed to conduct repairs (exterior faucet, kitchen faucet and fobs); the landlord carried on an unauthorized short term rental for 17 months causing severe inconvenience and disturbance to the tenant; and the landlord had an unmanaged goat which scared the tenant and reduced their enjoyment of the unit.

The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment states as follows:

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.

...

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16).

(Emphasis added)

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The parties have sharply contrasting narratives.

In assessing the credibility of the landlord, I find that the representative at the hearing was not fully acquainted with the history of the tenancy. He repeatedly dismissed the tenant's complaints as exaggerated. In summary, he said that everything complained of by the tenant was "not that bad". He provided unbelievable, implausible testimony that did not accord with the facts as I find them. I find the landlord's testimony about his interactions with the tenant and his good motivations to be self-serving and unreliable. I characterize many of the landlord's submissions as being fabricated in order to attempt to cast a better light on the landlord's poor behaviour and to excuse the landlord's non-compliance with municipal regulations as well as with ordinary landlord obligations. I found the landlord's documentary evidence to be unconvincing and self-serving.

As a result of these observations and findings, I give less weight to the landlord's evidence and submissions.

I found the tenant's evidence forthright, credible and articulate. I give considerable weight to her testimony which was supported in all material respects by the documentary evidence.

While the landlord was notified many times of the tenant's complaints, I find the landlord was clearly and undisputedly put on notice of the range and nature of the tenant's claim for loss of quiet enjoyment in the letter of January 24, 2019. The landlord acknowledged receipt of this letter. I find the landlord did not address the tenant's concerns after this articulate, lengthy notification. I find the loss of quiet enjoyment ended when the goat left the property in March 2020. I find that, only at the hearing, did the landlord address repair issues and repair compensation obligations.

In consideration of the quantum of damages, I refer again to the *Residential Tenancy Policy Guideline # 6* which states:

In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

I find that the landlord ignored obligations to the tenant to provide quiet enjoyment. I find the tenant was able to live in the unit during this period but was significantly deprived of her right to live peacefully by the landlord's failure to act or to respond adequately. I find that, while the source of the disturbances varied from time to time, the tenant was consistently denied full quiet enjoyment for this period.

I have considered the history of this matter, the parties' testimony and evidence, and I find the tenant has met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment from January 2019 until March 2020, a period of 14 months for the disturbance caused by landlord in the categories referenced above. I find it is reasonable that the tenant should receive compensation in the amount of 30% of the rent paid for this period which I find is \$7,551.60.

Filing Fee

I find the tenant is entitled to reimbursement of the filing fee of \$100.00.

Summary

I direct that the following award is made pursuant to the tenant's claims for the following:

- A monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

In summary, I award the tenant the following:

ITEM	AMOUNT
Loss of quiet enjoyment 30% x \$1,768.99 x 14	\$7,551.60

Reimbursement filing fee	\$100.00
TOTAL AWARD	\$7,651.60

I direct the tenant may deduct this amount from monthly rent until the full amount is paid.

Other Claims

I dismiss the tenant's application under the following sections without leave to reapply because of the landlord's undertakings made during the hearing which form part of this Decision. In consideration of these undertakings, I find the tenant has not met the burden of proof with respect to the following claims:

- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order requiring the landlord to carry out repairs pursuant to section 32;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 62(3);

I find the tenant did not meet the burden of proof with respect to the following claim which I dismiss without leave to reapply.

- An order to restrict or suspend the landlord's right of entry pursuant to section 70;

As agreed by the landlord during the hearing, the landlord is ordered as follows:

1. The landlord shall reimburse the tenant within 30 days for repairs of the kitchen faucet in the amount of \$179.05;
2. The landlord shall provide the tenant within 30 days with a water hose splitter and water hose of adequate length to allow the tenant access to water at the front of the unit;
3. Within thirty days, the landlord shall install a key pad by the garage entrance and install a functioning keypad in the master bedroom;

4. The landlord shall forthwith advise the present occupants of the other building on the property shared with the unit that the walkway by the unit is private to the tenant.

Conclusion

I grant the tenant a monetary order pursuant to section 62, 65 and 72 in the amount of **\$7,651.60** to be paid by deducting this amount from monthly rent until paid in full.

The landlord is ordered as follows:

1. The landlord shall reimburse the tenant within 30 days for repairs of the kitchen faucet in the amount of \$179.05;
2. The landlord shall provide the tenant within 30 days with a water hose splitter and water hose of adequate length to allow the tenant access to water at the front of the unit;
3. Within thirty days, the landlord shall install a key pad by the garage entrance and install a functioning keypad in the master bedroom;
4. The landlord shall forthwith advise the present occupants of the other building on the property shared with the unit that the walkway by the unit is private to the tenant.

I dismiss the balance of the claims without leave to reapply.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) to be enforced as an order of that Court.

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: May 15, 2020

Residential Tenancy Branch