



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, DRI, OLC, RP, LAT, LRE, RR, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation and for the recovery of the filing fee. The tenant also applied for a host of other remedies. During the hearing it became apparent that there was insufficient time to deal with all aspects of the tenant's application. The tenant stated that the main remedy she was seeking was compensation for loss of quiet enjoyment and agreed to withdraw her dispute of the most recent rent increase.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard I find the tenant has applied for a monetary order for compensation in addition to several other remedies.

As these remedies that the tenant has applied for are unrelated to the main section, which is for compensation, I dismiss these sections of the tenant's claim with leave to reapply. Accordingly, this hearing only dealt with the tenant's application for a monetary order for compensation and the recovery of the filing fee.

The tenant's application to dispute a rent increase is dismissed without leave to reapply. The remainder of the tenant's application is dismissed with leave to reapply.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant was accompanied by legal counsel. The landlord was represented by his agent.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

The parties provided extensive documentary evidence. All parties' testimonies and evidence have been considered in the making of this decision. As this matter was conducted over 80 minutes of hearing time, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Is the tenant entitled to a monetary order?

Background and Evidence

The background facts are generally undisputed. The tenancy started in April 2015. The current monthly rent is \$652.00 payable on the first of each month. The rental unit is located in the basement of the landlord's home. The landlord lives upstairs.

The tenant stated that through the tenancy, the landlord made several unannounced visits to the rental unit. The landlord agreed that he had visited the rental unit without providing at least 24 hour written notice but added that he usually provided verbal notice prior to his visit. The landlord has agreed to provide proper written notice for future visits.

The tenant described two visits by the landlord which prompted this application for compensation.

The first visit was on March 04, 2020 at approximately 9:30pm. The tenant stated that the landlord's agent RA who is also the landlord's son-in-law banged on the living room window and kicked the security door. A total of three people, two males and one female entered the unit using the landlord's key, for the purpose of retrieving a remote control that was allegedly "stolen" by the tenant.

The tenant stated that RA behaved in an aggressive manner towards her, hit her cell phone out of her hand and threatened to beat her up. The tenant called 911 and the police attended the rental unit.

RA stated that he visited the rental unit late at night in order to meet the male tenant who is home at that time. He agreed that he did not provide any written notice to the tenant but stated that he had informed her verbally earlier that day. RA stated that the tenant was waving her phone right in front of his face and therefore he swatted it away.

The second visit was on April 15, 2020 at 5:00pm. The tenant stated that she was home alone in the rental unit. While using the bathroom she heard the knocking and chose not to open the door for fear of an altercation. RA agreed that he had not provided notice to the tenant prior to the visit. The tenant stated that RA used his key to enter the unit along with two other people. The tenant testified that RA and the other two adults moved some of her belongings to the back yard and put her computer in the landlord's locked garage.

The tenant stated that the male tenant arrived and when he demanded the return of their belongings, they were forced outside the rental unit and were locked out for three hours before the police arrived in response to their call. RA changed the lock on the security door.

The police ordered the landlord to return the tenant's belongings, change the locks and provide the tenants with access to the rental unit. A police file number was filed into evidence.

The tenant stated that she was fearful of the landlord and therefore applied for other remedies such as permission to change locks and restrict the landlord's right to enter the rental unit.

The tenant is claiming compensation in the amount of \$5,000.00 for the loss of quiet enjoyment. The tenant stated that the multiple unscheduled visits by the landlord were disruptive and caused her to fear for her safety. The tenant is also claiming compensation for the landlord's conduct through the tenancy which included an attempt to forcibly evict her during a state of emergency, due to the pandemic.

Analysis

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant must show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

With regard to the tenant's monetary claim for compensation for loss of quiet enjoyment in the amount of \$5,000.00, I have reviewed the submissions of both parties and I find that the tenant's claim is based on the conduct of the landlord with regard to entries into the rental unit without prior notice, changing the locks, locking the tenant out, aggressive behaviour and an illegal attempt to forcibly evict the tenant during a state of emergency.

The landlord agreed that he visited the unit without proper written notice, used his key on at least two occasions to enter the rental unit, changed the locks, locked the tenant out for at least three hours, and removed some of the tenant's belongings out of the rental unit without her permission.

Section 28 of *The Residential Tenancy Act* establishes tenants' rights to quiet enjoyment which include but are not limited to:

- Reasonable privacy
- Freedom from unreasonable disturbance
- Exclusive possession, subject to the landlord's right of entry under the Legislation
- Use of common areas for reasonable and lawful purposes, free from significant interference.

Every tenancy agreement contains an implied covenant of quiet enjoyment. If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes. The covenant of quiet enjoyment promises that the tenant shall enjoy the possession and use of the premises in peace, without disturbance and with reasonable privacy.

Based on the testimony of both parties, I find that the conduct of the landlord's agent RA was egregious and unacceptable. A landlord cannot physically evict a tenant, change the locks or move a tenant's personal belongings without an order from the Residential Tenancy Branch. I find that the tenant is entitled to compensation.

Residential Tenancy Policy Guideline# 22 states that where there is a termination or restriction of a service or facility for some time, an arbitrator may find there has been a breach of contract and award compensation. In this case I find that a breach of contract occurred resulting in inconvenience and stress to the tenant and a reduction of the value of the tenancy.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed and the illegal eviction attempt during a state of emergency.

I find it appropriate to award the tenant \$2,000.00 for the breaches of the tenancy agreement by the landlord which include visits without prior notice, changing locks without an order from the Residential Tenancy Branch, locking the tenant out and attempting to evict the tenant illegally.

The tenant has proven her claim and therefore I award the tenant the recovery of the filing fee.

Overall the tenant has established a claim of \$2,100.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of \$2,100.00

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 21, 2020

Residential Tenancy Branch