



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding mainstreet mainstreet
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDCT, LAT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order requiring the landlord to comply with the *Act*, regulations, and/or tenancy agreement, pursuant to section 62 of the *Act*;
- an authorization for the tenant to change the rental unit's lock, pursuant to section 31; and
- a monetary order for compensation for damage or loss under the *Act*, Residential Tenancy Regulation or tenancy agreement, pursuant to section 67 of the *Act*.

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

Preliminary Issue – Service of Documents

The landlord confirmed receipt of the tenant's application and evidence (the materials) on June 24, 2020. The tenant confirmed receipt of the landlord's evidence on June 30, 2020.

The tenant affirmed he believes his girlfriend faxed or emailed his evidence to the Residential Tenancy Branch. The tenant's evidence is a three-page letter.

The tenant's evidence has not been submitted to the Residential Tenancy Branch. As such, pursuant to Rule of Procedure 3.14, the three-page letter served by the tenant is not accepted into evidence. The landlord's evidence has been accepted.

Preliminary Issue – Moot Application

The tenant's application for an order requiring the landlord to comply with the Act and an authorization to change the rental unit's lock is moot, as the tenancy ended on July 01, 2020.

Issue to be Decided

Is the tenant entitled to a monetary order for compensation for damages or losses?

Background and Evidence

I explained to the attending parties it is their obligation to present their evidence. While I have considered the accepted documentary evidence and the testimony of the parties, not all details of the tenant's submission and arguments are reproduced here. The relevant and important aspects are summarized and my findings are set out below.

Both parties agreed the periodic tenancy started on December 01, 2016 and ended on July 01, 2020. Monthly rent was \$963.18, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of \$425.00 and still holds it in trust. A tenancy agreement was submitted into evidence.

The tenant affirmed he lives with his girlfriend and his 27-year-old daughter spends the weekends with him. On Friday, June 19, 2020, the tenant left the rental unit in the morning and received a phone call at 9:15 P.M. from his daughter informing him that an elderly man was inside the rental unit. The call disconnected and the tenant was not able to call back his daughter. The tenant called the police and the building emergency phone number.

Both the police and the rental building security went to the tenant's rental unit. The elderly man, resident of the same rental unit building, peacefully left the rental unit. The tenant's daughter had never seen the elderly man before, was terrified and asked for a friend to sleep with her that night.

The tenant returned to his rental unit on Sunday, June 21, 2020. The tenant found clothing of the elderly man all over his rental unit and he had to clean his rental unit.

The tenant did not feel safe at the rental unit and moved-out. The tenant also affirmed a few months ago the same elderly man tried to enter his rental unit.

The landlord affirmed there was no break-in, the elderly's man access code was incorrectly assigned to the tenant's rental unit and apologized for error. The access code was corrected on the same night at 10:30 P.M.

The landlord is a large company that manages 13,000 rental units across Canada. There are 288 rental unit's in the rental complex where the tenant lives. The landlord affirmed there are protocols to avoid incorrectly assigning an individual access code to a different rental unit and staff meetings happened to review the procedures in order to avoid a similar incident.

This situation was discussed with the vice-president and CEO of the landlord. The landlord apologized to the tenant for the honest mistake and accepted the tenant's June 30th one-day notice to end the tenancy on July 01. The landlord affirmed he only received the keys on July 08, 2020 and will return the security deposit if the tenant provides a forwarding address. On June 23 the tenant spoke with the landlord and demanded a monetary compensation.

Analysis

Sections 7 and 67 of the Act state:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the

party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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. The onus to prove their case is on the person making the claim.

Section 28 of the Act states:

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];

Based on the testimony of both parties, I find the landlord breached section 28 of the Act by incorrectly assigning an individual access code to a different rental unit and enabling the elderly man to enter the tenant's rental unit.

Residential Tenancy Branch Policy Guideline 16 states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In accordance with sections 28 and 67 of the Act and Residential Tenancy Branch Policy Guideline 16, I award the tenant nominal damages in the amount of \$1,000.00.

Conclusion

Pursuant to section 67 of the Act, I grant the tenant a monetary order in the amount of \$1,000.00.

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: July 20, 2020

Residential Tenancy Branch