



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, PSF, LRE, LAT, OLC, FFT, MNDCT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following orders:

- that the landlord make repairs to the rental unit or property;
- that the landlord provide services or facilities required by the tenancy agreement or the law;
- suspending or setting conditions on the landlord's right to enter the rental unit;
- permitting the tenant to change the locks to the rental unit;
- that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony and provided evidentiary material in advance of the hearing. The parties were given the opportunity to question each other and give submissions.

The parties agree that evidence has been exchanged, and all evidence provided by the parties has been reviewed and is considered in this Decision.

Issues to be Decided

- Has the tenant established that the landlord should be ordered to make repairs to the rental unit or property?
- Has the tenant established that the landlord should be ordered to provide services or facilities required by the tenancy agreement or the law?

- Has the tenant established that the landlord's right to enter the rental unit should be limited or allowed conditionally?
- Has the tenant established that the tenant should be permitted to change the locks to the rental unit?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and specifically for loss of quiet enjoyment, cleaning, yard tools, and damaged items?

Background and Evidence

The tenant testified that this fixed-term tenancy began on February 15, 2020 and reverts to a month-to-month tenancy after February 15, 2021, and the tenant still resides in the rental unit. Rent in the amount of \$850.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$450.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an upper/lower duplex, and the tenant resides in the lower back part with a front door leading to the back yard. The other unit is also tenanted, and the landlord does not reside on the property. A copy of the tenancy agreement has been provided as evidence for this hearing.

When the tenant moved into the rental unit, she didn't know about drug addicts or being sworn at, and would not have moved in if she had known. The neighbouring tenants kept asking the tenant for money but turned on her when she stopped giving them money and food. Now they're threatening that they will have the landlord evict her. She has told the landlord several times about the problems with the neighbouring tenants, but he keeps saying that they need to work it out themselves and takes no responsibility at all for their actions. The tenant just wants peace and quiet.

With respect to the application for an order that the landlord make repairs to the property, the tenant testified that the back yard has not been mowed which is the property rented by the neighbouring tenants. The tenant also wants the landlord to spray wasp nests on the shed.

Services or facilities that the tenant seeks is a camera in the back yard so the tenant has evidence of what the neighbouring tenants are doing, because things have been stolen from the shed, such as wrenches, which belong to the tenant.

The tenant isn't home much because she works a lot, and the landlord has not entered the rental unit since the COVID Pandemic. However, the tenant does not trust the landlord and seeks an order that he not enter the rental unit.

The tenant also testified that the landlord is friends with the neighbouring tenants, and to be sure the landlord doesn't give keys for the rental unit to the neighbouring tenants, the tenant seeks an order permitting the tenant to change the locks to the rental unit.

The tenant was not told when moving in that there were drug addicts, poop in the back yard. The neighbouring tenants called the tenant bad names from the beginning, broke a fence down that the tenant had erected, destroyed her plant pots in the front yard, and told her dog to bite her face off. The landlord was reasonable, but now he's not and the tenant seeks an order that the landlord comply with the *Act* by providing the tenant with quiet enjoyment.

With respect to the tenant's monetary claim, the tenant seeks:

- \$139.00 for garbage pick-up for cleaning the front and back yard;
- \$40.00 for garbage bags to clean up the garbage;
- \$120.00 for a new rake and shovel for cleaning up dog poop;
- \$300.00 for the tenant's time to clean up 3 inches of dog poop in the back yard;
- \$200.00 for loss of cable, although not included in the tenancy agreement;
- \$1,000.00 per month for loss of quiet enjoyment;
- \$200.00 per month off rent for 12 months for enduring destruction of property.

The tenant testified that pots that she put out front with plants to make the place look nice were smashed. The tenant has provided numerous photographs as evidence, but no receipts for any of the items claimed. The cable was in the name of the neighbouring tenants and they had an arrangement that each suite would pay half, but they had it disconnected, contrary to their agreement.

The landlord testified that the neighbouring tenants are not his friends; they are tenants.

The tenant called the Ministry of Child Development stating that the neighbouring tenants' daughter was being raped, and that's when the problem started. Then the tenant was fighting and yelling at a 5 year old girl, arguing with next door people, and she argues with everyone.

The landlord went to police to find out more, and they went to the rental unit 3 times and said the tenants were always verbally arguing. It's out of the landlord's hands and he has no power to control it.

With respect to the tenant's claim for repairs, the landlord testified that the tenant wants the neighbouring tenants to cut the grass, but won't let them in the yard. The landlord will spray the wasps, but the tenant's application specifies that she wants the landlord to stay off the property.

The landlord has never gone into the rental unit and now he doesn't have a key. The tenant locked herself out 3 times and twice the landlord left work to let her in. The third time, he gave the tenant his original key because he couldn't leave work.

The tenant has never asked the landlord to fix the fence. The Policy Guidelines state that if a tenant erects a fence, the tenant is responsible for maintenance of it.

With respect to the tenant's monetary claims the landlord testified that the tenant has exclusive use of the back yard and didn't ask for money, but told the landlord he didn't have to pay for it and made an agreement with the neighbouring tenants upstairs.

Garbage bags are not worth \$40.00.

The landlord disputes the \$120.00 claim for a new rake and shovel and testified that she already had them when she moved in; the landlord saw them.

If there was 3 inches of dog poop to clean up, it would be a lot more expensive than the tenant's \$300.00 claim. The landlord disputes any payment to the tenant.

The loss of cable is not the landlord's concern; cable and internet are not included in the tenancy agreement.

With respect to the tenant's claim for loss of quiet enjoyment, the landlord testified that the tenant disturbs the neighbours and the neighbouring tenants upstairs. The tenant has difficulty with 2 different neighbours, fighting with them, and the neighbour behind the rental unit called police. The tenant causes trouble and blames and swears at the upstairs tenants. The landlord does not know who broke the plant pots, however other neighbours next door wrote a letter to the landlord stating that the tenant stole their plant. She's harassing them and writing long messages.

Analysis

Firstly, with respect to the tenant's application for an order that the landlord mow the lawn and spray wasp nests, the landlord has agreed to spray for wasps, however the tenant must allow the landlord on the property to do so. The tenant has not satisfied me that it's the landlord's responsibility to mow the lawn.

With respect to the tenant's application for an order that the landlord provide services or facilities required by the tenancy agreement or the law, the landlord is not responsible for erecting a camera in the back yard, and I dismiss that portion of the application.

The tenant's application for an order limiting or setting conditions on the landlord's right to enter the rental unit is also dismissed. The tenant has the only key presently, and I order the tenant to give it back to the landlord immediately so the landlord can provide the tenant with a copy. I further dismiss the tenant's application for an order permitting the tenant to change the locks to the rental unit. In order to be successful, the tenant must be able to establish that the landlord has entered contrary to the law. The tenant has not established that.

With respect to the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, the tenant testified that she seeks quiet enjoyment of the rental unit. I am not satisfied that any loss of quiet enjoyment is caused by the landlord or other tenants, and I dismiss that portion of the application.

Where a party makes a monetary claim for damages or loss as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

The tenant claims that it cost her \$139.00 for garbage pick-up and \$40.00 for garbage bags, and \$300.00 for the tenant's time to clean up 3 inches of dog poop. I find that excessive, and the photographs do not match the testimony. I also find that the landlord is not responsible for purchasing yard tools to donate to a tenant. The tenancy agreement does not specify that cable or internet are included in the rent, and I dismiss the tenant's \$200.00 claim for loss of cable.

I am not satisfied that the tenant has established that the broken plant pots were the tenant's pots to begin with, considering the landlord's testimony that a neighbour called to tell him that the tenant stole their plant pots. I find that the tenant has failed to satisfy elements 2 or 3 in the test for damages with respect to the tenant's \$200.00 per month claim for destruction of property.

Similarly, I dismiss the tenant's \$1,000.00 claim for loss of quiet enjoyment. The evidence clearly indicates that the tenant has caused some of the problems in the

neighbourhood and thereby has not mitigated any loss suffered by the landlord's failure to provide the tenant with quiet enjoyment. I find that the landlord has not failed to comply with the *Act* or the tenancy agreement.

Since the tenant has not been successful with the application, the tenant is not entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I order the tenant to comply with the *Residential Tenancy Act* by giving the landlord the key to the rental unit so that the landlord may provide a copy to the tenant.

This order is final and binding.

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: September 09, 2020

Residential Tenancy Branch