Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, OLC, MNDCT, FFT

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 for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62 of the Act;
- an order to restrict or suspend the landlord's right of entry, pursuant to section 70 of the Act;
- 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*; and
- an authorization to recover the filing fee for this application, pursuant to section 72 of the Act.

Both parties attended the hearing. The tenant was assisted by advocate AO. Witness TB for the landlord also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*

Preliminary Issue – Vacant Rental Unit

At the outset of the hearing both parties agreed the tenant moved out on September 30, 2020.

The application for an order for the landlord to comply with the Act and for an order to restrict or suspend the landlord's right of entry is moot since the tenant moved out.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order for the landlord to comply with the Act and for an order to restrict or suspend the landlord's right of entry.

Issues to be Decided

Is the tenant entitled to:

01. a monetary order for compensation for damage or loss?
02. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is their obligation to present the evidence to substantiate the application.

The tenant stated the tenancy started on May 31, 2020 and the landlord stated it started on May 29, 2020. Both parties agreed the tenancy ended on September 30, 2020. Monthly rent in the amount of $2,800.00 was due on the last day of the prior month. The landlord collected and still holds a security deposit of $1,400.00.

The landlord attempted to return the amount of the security deposit to the tenant on May 26, 2020. The tenant refused the return of the deposit and paid the first month rent that same day.

The landlord said the tenant had to pay rent before he moved in. For this reason, the landlord asked the tenant to pay the first rent on May 26, 2020.

A written copy of the tenancy agreement and the two-page addendum signed on May 15, 2020 were submitted into evidence. It states:

5. The Parties acknowledge that renovation and/or repair may occur at the Property during the tenancy and agree that the amount of rent owing will be reduced by mutual agreement at such time as this may occur.

The tenant affirmed the landlord was asking for $2,750.00 but because he has a pet rent was raised to $2,800.00.

On May 31, 2020 the landlord texted the tenant and informed the door access code and provided instructions on how to open the garage door.

The tenant affirmed the rental unit was unsuitable for occupancy because of all the repairs that happened during the tenancy. As the parties did not know how long the repairs would take to be completed they did not specify how much the rent reduction would be.

The tenant is seeking compensation in the amount of $560.00 (item 1 in the tenant's monetary order worksheet) due to repairs in the rental unit, in accordance with clause 05 of the tenancy agreement. During the first four days of the tenancy the rental unit's deck was undergoing repairs. In July the roof was repaired for eight days, a plumber attended the rental unit for one day and an appraiser also attended the rental unit. The tenant affirmed most of these days he had to take time off from work to be at home and facilitate the repairs. The roof repairs started as early as 7:30 A.M. during a weekend and woke up the tenant.

The landlord affirmed the deck repair happened only on June 18. The roof repair happened between July 16 and 20 and the work only started between 8:00 and 8:30 A.M. The tenant was in the rental unit during the repairs because he wanted, as the landlord offered to be in the rental unit to assist the contractors.

The landlord texted the tenant on July 11, 2020 and denied his claim for rent reduction due to the repairs:

> Unless the amount of the money making you a millionaire, well that is different story, you will get more benefit living in my house than the compensation. Just be civil. I have done a lot for you.
> […]
> Yes they have in addendum, so in the addendum you promise to move the furniture but you never did. For this we are "even"

The tenant submitted two photographs of construction debris he cleaned up after the deck repair was completed and said the rental unit was empty for a few months before it was rented. The repairs could have been completed before the tenancy started. The tenant also affirmed the landlord threatened to evict him because he asked for the rent reduction due to repairs.

The tenant is asking for a compensation in the amount of two months of rent (total amount of $5,600.00 – item 2) for loss of quiet enjoyment during the tenancy.

The tenant submitted into evidence copies of text messages dated May 26, 2020 when the landlord was asking the tenant to pay the rent earlier than its due date:

> T: What time will I get the door access code on the 31st? I am hoping to start loading in contents around 9-930.
> L: I will give you in the morning.
> […]
> L: Have you send the payment. I will be busy for moving out downtown too on 31. No. You will have access on the 31.
> T:Ok well isn't that when I should send my rent then?
> L: I will send your deposit asap, if you keep arguing with me about payment and moving date. I do not need a headache. If you will want to rent, Please pay now, of not let me know now, I will send your deposit

On June 01 the tenant asked the landlord to provide advance notice before entering the rental unit. The landlord replied: "Sorry need to be done. We can fight if you want. I have warned you before you moving in. No option."

The tenant submitted a diary indicating 9 dates when the landlord attended the rental unit unannounced. The landlord stated she never entered she only entered the rental unit on the day the plumber attended. The landlord's husband (witness TB) entered the basement rental suite on June 18 and 24, 2020.

The tenant affirmed there were excessive viewings for new tenants without a written 24-hour notice between August 14, 2020 and September 30, 2020. The viewers, some of the from other provinces, were not pre-screened and were not asked to wear a mask.

The landlord affirmed there was one family from another providence. Sometimes in the viewings there were two or three families. The landlord always provided the tenant with a written 24-hour notice for the viewings. The landlord met the prospective tenants

outside the rental unit, but the tenant was showing inside the rental unit, as the tenant did not allow the landlord to enter the rental unit.

The landlord submitted into evidence 24-hour written notices dated August 14, 15 and 24, 2020 for viewings on August 15, 17, 19, 24 and 28, 2020. The landlord also submitted a posted advertisement: “The house is 23 years old…Viewing only after 530pm, and please wearing mask as Tenant requested”.

The tenant affirmed the landlord told prospective new tenants that he is a hoarder. An email from a prospective tenant dated August 24, 2020 was submitted into evidence indicating the prospective tenant was not pre-screened for health and financial conditions.

Analysis

Section 7 of the Act states:

> 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.

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.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

Compensation due to repairs (item 1)

Based on the tenant's cohesive testimony and text messages dated May 31, 2020, I find the tenancy stated on May 31, 2020 and the rental unit was repaired (deck, roof and plumbing) in the first two months.

Based on the terms of the tenancy agreement, both parties testimony and the photographs showing construction debris that the tenant cleaned up, I find the landlord failed to comply with the clause 05 of the tenancy agreement by not compensating the tenant due to repairs in the rental unit. I find the amount of $300.00 is a reasonable compensation for the repairs mentioned in clause 05 of the tenancy agreement. Thus, award the tenant the amount of $300.00.

Loss of quiet enjoyment (item 2)

The parties offered conflicting verbal testimony about unannounced visits of the landlord to the rental unit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The tenant did not provide any documentary evidence to support his claim. The tenant did not call any witnesses. The diary submitted into evidence is a document typed by the tenant, equivalent to testimony. I find the tenant did not prove, on a balance of probabilities, the landlord was attending the rental unit unannounced.

Based on the landlord's testimony and the 24-hour written notices submitted into evidence, I find the landlord complied with section 29(b) of the Act.

Based on the parties testimony and the text messages dated May 26, 2020, I find the landlord asked the tenant to pay rent before the due date. I also find the text messages the landlord constantly sent the tenant during the tenancy were sometimes belligerent and threatening. I find these actions were unreasonable disturbance and not only a temporary discomfort.

Based on the tenant's testimony and the email dated August 24, 2020, I find the landlord was not screening the prospective tenants for health and financial conditions and was providing false negative information about the tenants. I also find, based on both parties testimony, the landlord was inviting groups of up to 3 families for viewings at the same time, and this is not a reasonable number due to the pandemic. As the landlord did not screen prospective tenants for health and financial conditions, I find this increased the number of viewings.

Section 28 of the Act states:

> 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.

Residential Tenancy Branch Policy Guideline 6 states:

> **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.
> […]
> Compensation for Damage or Loss
> 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**). 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.**
> A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.
>
> (emphasis added)

Thus, the landlord breached section 28(b) of the Act.

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.

Pursuant to section 67 of the Act and Residential Tenancy Branch Policy Guideline 16, I award the tenant nominal damages in the amount of $400.00.

Filing fee and summary

As the tenant was successful in this application, the tenant is entitled to recover the $100.00 filing fee.

In summary:

Item	**Amount $**
Compensation due to repairs	300.00
Loss of quiet enjoyment	400.00
Filing fee	100.00
Total monetary award	**800.00**

Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the tenant a monetary award in the amount of $800.00.

The tenant is provided with this order in the above terms and the landlord must be served with this order as soon as possible. Should the landlord fail to comply with this

order, this order may be filed in the Small Claims Division of the Provincial Court and 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: October 16, 2020

Residential Tenancy Branch