



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kevington Building Corp and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with two applications by the tenant, pursuant to sections 67 and 72 of the *Residential Tenancy Act*. The tenant applied for compensation for loss under the *Act* and for the recovery of the filing fee.

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 represented herself. The corporate landlord was represented by their agents and legal counsel.

As both parties were in attendance, I confirmed service of documents. The landlord confirmed receipt of the tenant's evidence and stated that he had not filed any of his own evidence. I find that the landlord was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

The tenant provided extensive documentary evidence. 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.

Preliminary Matters

At the outset of the hearing the landlord raised the issue of the statute of limitations.

Section 60 of the *Residential Tenancy Act* addresses this issue and lays out the latest time an application for dispute resolution can be made.

Latest time application for dispute resolution can be made:

60 (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

(2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

Section 60(1) states that an application for dispute resolution must be filed within two years of the date that the tenancy ended. If an application is not made within the two-year period, a claim arising under this *Act* or the tenancy agreement in relation to the tenancy ceases to exist.

In this case the tenancy ended on July 31, 2018. The tenant made two applications – the first one on July 29, 2020 and the second one on July 31, 2020. Both applications were made within the legislated time frame of two years.

The landlord argued that the specific events that led up to the monetary claims of the tenant took place prior to two years from the date she made her applications. I find that the tenant made her application within two years of the date the tenancy ended and is therefore in compliance with Section 60(1) of the *Residential Tenancy Act*.

Issues to be decided

Is the tenant entitled to compensation and to the recovery of the filing fee?

Background and Evidence

The parties agreed that a series of one-year fixed term tenancies started on January 01, 2015. The tenant moved out on July 31, 2018. The monthly rent at the end of tenancy was is \$1,760.00 payable on the first of each month.

The tenant filed copies of the last two tenancy agreements into evidence. The first tenancy agreement in the documentary evidence is a fixed-term tenancy agreement with a vacate clause. This term started on January 1, 2017 and ended on December 31, 2017. The tenancy agreement states that rent in the amount of \$1,680.00 (\$1,645.00 for rent and \$35.00 for storage) is due on the first day of the month.

The tenant testified that on December 19, 2017, the landlord asked her to sign a new lease for a fixed term tenancy starting on January 01, 2018 and ending on January 31, 2019. This lease also had a vacate clause and an increased monthly rent of \$1,760.00 (\$1,710.00 for rent and \$35.00 for storage) that was due on the first day of the month.

The tenant stated that the rent was increased without proper notice to her and therefore was not a valid rent increase. The parties agreed that the tenant did not vacate the rental unit between the 2017 and 2018 agreements and that other than the rent and storage fee amounts, there were no material changes to the tenancy. The tenant is claiming a return of the amount of rent that she believes she overpaid for the months of January to July 2018 in the amount of \$560.00.

The tenant stated that she took time off work to prepare her applications, submit evidence and attend the hearing. The tenant is claiming a total of \$292.00 as compensation for her time, effort and incurred costs.

The tenant testified that sometime at the end of May 2018, her laundry machine stopped working. The tenant informed the landlord by email with a request to carry out repairs after the tenant returned from a short vacation of one week. The landlord agreed that she received the email from the tenant requesting the repair. The tenant stated that upon her return, the landlord did not schedule a repair. The landlord stated that she was waiting for another maintenance request from the tenant. The tenant testified that she met the maintenance person mid June and he informed her that he would attend the unit on June 25, 2018. By July 03, 2018, maintenance person had not attended the rental unit and the machine was not repaired. The tenant wrote a second email to the landlord, requesting the repair. The work was done on July 05, 2020

The landlord agreed that the tenant informed her of the problem but added that the tenant did not follow up on the maintenance request, upon her return. The tenant is claiming compensation for the loss of the facility in the amount of \$200.00.

The tenant is also claiming compensation for time spent doing laundry outside of the rental unit in the amount of \$1,512.00. The tenant described the extreme importance of the use of the laundry facility for her, because she is a health care worker.

The tenant testified that many of her personal items were ruined during the tenancy and she is claiming \$500.00 as compensation. The tenant did not file evidence to support her claim. During the hearing, the tenant decided to withdraw this portion of her claim.

The tenant described unusual activity that took place in the rental unit on multiple occasions, while she was not present in the rental unit. The tenant stated that she found dog feces in the toilet a few times and she suspected that someone was entering her unit to carry out this task. The tenant also alleged that she found urine in her shampoo bottle and that someone had sprayed urine on her bed and in the kitchen. The tenant stated that she informed the landlord multiple times about her concerns, but the landlord responded approximately once for every 5 complaints. The tenant filed copies of emails to support her testimony. The landlord did not file evidence of responses to the tenant's complaints.

The tenant stated that due to all these goings on she suffered a loss of quiet enjoyment, a loss of privacy and emotional distress. The tenant is claiming \$5,280.00 as compensation.

The tenant testified that because she believed that her kitchen had been sprayed with urine, at the end of May 2018, she was unable to use the kitchen to prepare meals. The tenant also stated that she was unable to clean the kitchen at the end of tenancy for the same reason. The tenant is claiming the cost of her meals for the last two months of tenancy in the amount of \$1,200.00. The tenant hired a cleaner to clean the kitchen and is claiming \$300.00. The tenant stated she paid cash but did not have receipts to support her claim.

The tenant alleged that the landlord made her tenancy unbearable by not responding to her complaints. The tenant stated that she was forced to move out and claims that she was wrongfully evicted. The tenant agreed that the landlord did not serve her with a notice to end tenancy and that she made the decision to end the tenancy. The tenant is claiming \$21,120.00 as compensation and \$3,000.00 for the cost of moving.

The tenant is also claiming the cost of filing two applications in the amount of \$200.00.

The tenant made two applications with monetary claims. For the sake of efficiency, I have joined them together in the following table:

1.	Overpayment of rent	\$560.00
2.	Stationary, registered mail, printing	\$40.00
3.	Time to prepare, submit application and attend hearing	\$252.00
4.	Loss of laundry	\$200.00
5.	Time to do laundry outside home	\$1,512.00
6.	Personal items damaged	\$500.00
7.	Loss of quiet enjoyment, privacy, harassment and emotional distress	\$5,280.00
8.	Unable to use kitchen, cost of meals	\$1,200.00
9.	Cleaning	\$300.00
10.	Wrongful eviction	\$21,120.00
11.	Moving costs	\$3,000.00
12.	Filing fee for two applications	\$200.00
	Total	\$34,164.00

Analysis

1. Overpayment of rent - \$560.00

In December of 2017, a legislative change occurred prohibiting the enforcement of the majority of vacate clauses. According to the new legislation, the vacate clause in a tenancy agreement ceased to have effect except under certain circumstances and the tenancy would continue on a month to month basis or another fixed term. Based on the circumstances of this tenancy, the vacate clause ceased to have effect in December 2017 and the tenancy would continue on a month to month basis or another fixed term.

Residential Tenancy Policy Guideline #30 addresses Fixed Term Tenancies

D. RENEWING A FIXED TERM TENANCY AGREEMENT

A landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term. Rent can only be increased between fixed-term tenancy agreements with the same tenant if the notice and timing requirements for rent increases are met.

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

In this case, the landlord raised the rent payable on the renewed fixed term tenancy agreement without providing the tenant with any notice. Section 43(5) states that if a landlord collects rent that does not comply with requirements, the tenant may recover the increase. The tenant testified that she was required to pay the increased rent due under the tenancy agreement signed on December 19, 2017, without being served a proper Notice of Rent Increase as required under the *Act*.

Based on the above, I find that the landlord could raise rent if the notice and timing requirements for rent increases were met. I accept the tenant's testimony that she was not served with the three month notice of rent increase as required by the *Act*, prior to the rent increase and therefore pursuant to Section 43(5) of the *Residential Tenancy Act*, I find that the tenant is entitled to recover the amount of the increase, that she paid. Accordingly, I award the tenant her claim of \$560.00.

2. Stationary, registered mail, printing - \$40.00
3. Time to prepare, submit application and attend hearing - \$252.00

The legislation does not permit me to award any litigation related costs other than the filing fee. Accordingly, the tenant's claims #2 and #3 are dismissed.

4. Loss of laundry - \$200.00
5. Time to do laundry outside home - \$1,512.00

Residential Tenancy Policy Guideline# 22 states that where there is a termination or restriction of a service or facility for some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award compensation.

Based on the testimony of both parties, I find that the tenant informed the landlord of the problem and the landlord did not follow up in a timely manner. Therefore, I find that a breach of contract occurred resulting in inconvenience to the tenant and a reduction of the value of the tenancy. I find that the tenant is entitled to compensation for the days that she was without the use of the laundry machine.

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. A tenant may be entitled to reimbursement for loss of use of a facility even if the landlord made every effort to minimize disruption.

In late May 2018, the tenant informed the landlord by email that the laundry machine was broken and asked the landlord to schedule repairs a week later, as she would be away for one week. Based on the emails filed into evidence by the tenant and the testimony of both parties, I find that the tenant informed the landlord in writing that she would be available for repairs to be done in the first week of June 2018.

The landlord failed to schedule repairs. After communicating with the maintenance person for repairs to be done on June 25, 2018, the repairs did not get done that day. The tenant wrote another note to the landlord on July 03, 2020 and the machine was fixed on July 05, 2018, leaving the tenant without the laundry facility for at least 5 weeks.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the above, I find it appropriate to award the tenant \$500.00 for the loss of laundry and the time and expense of using a laundromat.

6. Personal items damaged - \$500.00

During the hearing the tenant withdrew her claim for damage to her personal items.

7. Loss of quiet enjoyment, privacy, harassment and emotional distress - \$5,280.00

Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”. As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. Every tenancy agreement contains an implied covenant of quiet enjoyment.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to 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 the loss of quiet enjoyment, I have reviewed the submissions of tenant and I find that the last few months of the tenancy were very stressful on both parties for different reasons. It is my determination that the parties found themselves in a situation which had progressively evolved and for which each had made some contribution to its unfolding.

Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant did not provide compelling evidence to support her claim of compensation for loss of quiet enjoyment, privacy, harassment and emotional distress and therefore the tenant’s claim for compensation in the amount of \$5,280.00 is dismissed.

8. Unable to use kitchen, cost of meals -\$1,200.00

9. Cleaning - \$300.00

The tenant testified that at the end of May 2018, someone entered her rental unit and sprayed urine all over the kitchen and since then she was unable to use the kitchen or clean it at the end of tenancy.

The landlord denied the allegation and I accept the landlord’s testimony that other than herself and the tenant no one has a key to the rental unit. Based on a balance of probabilities, I find it is highly unlikely that the landlord would engage in this sort of activity which amounts to vandalism. I find that the tenant has not proven her allegations and therefore her claims #8 and #9 are dismissed.

10. Wrongful eviction - \$21,120.00

11. Moving costs - \$3,000.00

The tenant described events that she alleges occurred in the rental unit which made her feel that she was being harassed by the landlord to move out. The landlord did not serve the tenant with a notice to end tenancy, but the tenant chose to move out and did so on July 31, 2018.

The landlord and tenant had different versions of events that led to the disagreements between them. The tenant was not able to provide any independent evidence to support her claim of harassment or wrongful eviction. Her case is entirely dependent on her version of events, a version which is disputed by the landlord. I have no basis for favoring one version over the other. I find that the tenant has not proven that she was wrongfully evicted and therefore her claims for compensation and the cost of moving are dismissed.

12. Filing fee for two applications - \$200.00

The tenant has proven a portion of both applications and therefore I award the tenant the recovery of the filing fee.

Overall, the tenant has established a claim as follows:

1.	Overpayment of rent	\$560.00
2.	Stationary, registered mail, printing	\$0.00
3.	Time to prepare, submit application and attend hearing	\$0.00
4.	Loss of laundry	\$500.00
5.	Time to do laundry outside home	\$0.00
6.	Personal items damaged	\$0.00
7.	Loss of quiet enjoyment, privacy harassment and emotional distress	\$0.00
8.	Unable to use kitchen, cost of meals	\$0.00
9.	Cleaning	\$0.00
10.	Wrongful eviction	\$0.00
11.	Moving costs	\$0.00
12.	Filing fee for two applications	\$200.00
	Total	\$1,260.00

I grant the landlord a monetary order under section 67 of the *Residential Tenancy Act*, for \$1,260.00. 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 for **\$1,260.00.**

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: November 22, 2020

Residential Tenancy Branch