



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, MNDCT, RP, AAT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order to reduce the rent for repairs, services or facilities agreed upon but not provided; for an Order for repairs to the unit, site or property, having contacted the landlord in writing to make repairs, but they have not been completed; an order to allow access for the Tenant or their guests; a monetary order for damage or compensation under the Act for the Tenant of \$10,400.00; and to recover the \$100.00 cost of their Application filing fee.

The Tenant, his counsel, A.C. ("Tenant's Counsel"), the Landlord, and their counsel, C.R. ("Landlord's Counsel"), and the Landlord's executor, D.W., ("Executor") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

Due to the complex nature of the Tenant's claims, the hearing was adjourned at the end of the first hour and reconvened, as the Parties had not had time to submit all of their evidence in the first hearing.

During the hearings, the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing. However, I canvassed the Parties regarding service of the

Application, Notice of Hearing, and evidentiary submissions on the appropriate Party, given that the Landlord is deceased. The Landlord's Counsel said: "There was no issue with service."

Preliminary and Procedural Matters

The Parties provided their email addresses in the hearing, and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence, to which they pointed or directed me in the hearing.

Before the Parties testified, I advised them that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated numerous different matters of dispute on the Application. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding, as we only had an hour in total for the hearing. The Tenant identified that his most important claim was for compensation of \$10,400.00 for the loss of quiet enjoyment of the rental unit; therefore, I will consider this claim, and the Tenant's request for recovery of the \$100.00 Application filing fee. The Tenant's other claims are dismissed with leave to reapply.

In the interim decision sent to the Parties, in which I adjourned the hearing, I also ordered the Landlord to repair the stairs leading to the rental unit by November 30, 2020, and to provide the Tenant with ongoing access to the laundry facilities at the residential property, which he says he has been denied since July 2020.

At the reconvened hearing, the Tenant's Counsel said that the stair replacement was complete in December 2020, and that the Executor has gone by to ensure that this happened, although there may be some issues remaining with the railings.

I also canvassed the Tenant to see if he has been granted access to the laundry facilities; however, he said "No, I still can't get in. I gained access one day and then all of a sudden they changed the locks." The Executor said that if [L.S.] has changed the locks again, "...we can certainly change the lock back."

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on January 1, 2018, and ran to December 31, 2020. While the Parties agreed that the Tenant would move out on December 31, 2020, the tenancy has continued on a month-to-month basis. The Parties agreed that the Tenant pays the Landlord a monthly rent of \$3,000.00, due on the first day of each month. The Parties agreed that the Tenant did not pay the Landlord a security deposit or a pet damage deposit.

In the hearing, the Tenant's Counsel explained the claim, as follows:

It is a general damages type of claim. The essence is that the other tenant that lives at this property has deprived my client of his right to quiet enjoyment and certain facilities guaranteed to him under the tenancy agreement

The first allegation is that she shattered his window by throwing a rock, and that the Landlord didn't address the repair in a reasonably timely fashion and didn't evict the other tenant as a result. The other tenant is not maintaining her unit or the patio facilities in a sanitary manner, which is causing pests. Making it impossible to enjoy his patio space or his tenancy. There are cockroaches. . . there is a hoarder situation going on at the other unit. She has her own private laundry facilities, but has changed the lock of the laundry room for the other two units in the rental facility; my client hasn't had a key or access for quite some time.

They are very serious issues, but no invoices or pecuniary damages are claimed.

When I asked the Tenant's Counsel to explain the basis of the amount claimed by the Tenant, he said:

It looks like a rent reduction – these issues should reflect a one-third reduction in the value of the tenancy until they are addressed. Some issues are ongoing, some upticks, and some serious incidents. It is based on an estimate of what the

Tenant believes is the reduction in the value of the tenancy.

The Landlord's Counsel said:

One initial comment. [L.S.] has been referred to . . . she was the deceased's spouse, but she's not on the tenancy. She's not a tenant in a tenant dispute, but she is an occupant.

Briefly, the window incident is addressed at page 55 of our evidence in an affidavit of [the Executor] noting that [L.S.] admitted that a rock was thrown through a unit. [L.S.] claims that [the Tenant] threw the rock, and vice versa. Given the unique shape of the window, it took some time for the glass panel to arrive.

Regarding their issues re the patio and cleanliness, there have been inspections by the City – they made an order and did an investigation.

In pages 25 and 26 of our evidence, the fire department ordered a number of items to be cleaned up. That work has been undertaken. I couldn't submit photos in enough time for the hearing.

The Executor said:

For the history, [the Landlord] was a pack rat. He kept a tremendous amount of personal effects and furniture stored inside and outside. It happened over a long period of time. We've been chipping away at it, but it is a work in progress.

This is not [L.S.] – she did not create the problem - but her husband created it over years. He leaves it to [L.S.], and she has to deal with it. There is evidence of power washing, there is work happening to fix the situation that was created over a long period of time.

Counsel for the Tenant said that the request for pest control is withdrawn; I accept this withdrawal, and therefore, I will not consider it in the evaluation of the Tenant's claims.

The Landlord's Counsel said:

Paragraph 22 on page 56, addresses the Tenant's complaints of loud parties from the Landlord. The Estate engaged a security firm for the property. Their

reports on what they saw are at pages 1 to 24. They cover from May 21 to July 20 – two months of surveillance. In each report, the property was quiet every night; there were no parties or loud music.

On paragraph 24 on page 56 of [the Executor's] affidavit, he notes that [the Tenant] has accused [L.S.] of being a prostitute, an illicit drug user, and a thief. She says he's thrown bottles and feces at her and has told her that she killed her husband. In his affidavit, [the Executor] notes that the Landlord recently passed away in December 2019. [The Executor] was sent a recording in which [the Tenant] said she was a bitch, said fuck you, that she killed her husband, and that she was called a whore.

The Estate started to begin eviction proceedings against [the Tenant], but the situation has improved, and those proceedings have been stayed.

Things are occurring on both sides. [L.S.] says she doesn't feel safe on the property, with [the Tenant] harassing her with some regularity

The Executor said:

The relationship between [the Tenant and L.S.] is not good. They have both said very vulgar things towards each other. [L.S.] is aware that she has to move, that this is not her property, and she is not able to remain there. She is in the process of moving and complying with orders to have everything removed from garage and storage units. It hasn't been an easy year for anyone, but under the circumstances, I don't see that a rent reduction is in order.

The Tenant said that the Landlord has not addressed the issues in a very expedient manner. He said:

[L.S.] has caused many issues, including the staircase, the window, the laundry, the pests. The Landlord has been notified of these things for months at this point. Covid or no Covid, the Landlord had a duty to address this in an expedient manner. The cockroaches, the mice and the rats were reported in May – it's October now. The access to laundry was reported in July to [the Executor]. To say that they have been dealt with in an expedient fashion....

Counsel for the Tenant said:

My friend mentioned that the Estate was responsible for dealing with the complaint about parties, but once we go through the evidence, parties are the least of it. The security company was there from May – July 20 – they showed up for about 15 minutes between 9:00 p.m. and midnight for several days. That's 750 minutes out of 720,000 minutes – and [L.S.] knew there was a company coming. Parties are the least of it.

The unsanitary conditions, damage to the rental property that she caused, the assault she committed. A video my friend mentioned in which she mocked and threatened him. It was taken by [L.S.]. She mocked and assaulted him a number of times. She made a throat cutting motion to her neck. The video was essentially created to – she provoked them into an argument to create this image that it's both sides. When really the overwhelming evidence is that [the Tenant] is here to testify to . . . Text messages will show that she has been harassing people. A former tenant of the property, who has a witness statement, moved out because of her comments.

In the reconvened hearing, I asked the Tenant to explain how he arrived at the amount he is claiming for loss of quiet enjoyment of the residential property: \$10,400.00.

Counsel for the Tenant said:

We're seeking non-pecuniary damages, so it's . . . we're not seeking compensation for a specific loss, but these are very serious interferences with our client's loss of quiet enjoyment and loss of facilities. The failure of the Landlord to address [L.S.'s] frequent interferences with [the Tenant's] quiet enjoyment has led to this. This "what-about'ism" – his treatment of her – is not really an answer to that claim. If the Landlord truly believes and has evidence that he has been interfering with the quiet enjoyment of [L.S.], he can bring notice for cause and we would vigorously challenge that.

Also, the denial of access to the laundry. [L.S.] has access to her own laundry, and the understanding of the tenancy agreement was that [the Tenant] and the former tenant, [C.], had access to this separate laundry facility. They wanted to limit their interaction with her.

If [L.S.'s] laundry facilities are not working, then the appropriate thing to do is to fix those, not grant her access to the Tenant's facilities. Why was the Landlord unable to prevent [L.S.] from denying access to the laundry? Counsel then

referred to page 156 of the Tenant's evidence, which includes a copy of the Tenant's text sent to the Landlord on July 28, 2020 at 18:37 hours. It states:

[L.] or someone has changed the lock on the laundry room preventing my access. My lease grants me access to a laundry [sic] room. This constitutes a further breach of a fundamental term of my lease.

Counsel for the Tenant continued:

The Landlord was given the July notice that someone had changed access to the laundry room; but since then, except for December 22, he has not had access to this facility.

An exact value of that is hard to put a number on, or has to do with the inconvenience of going elsewhere to do laundry.

Some of the other complaints about [L.S.] are very serious: the parties, noise, physical attacks, [the Tenant] describes in his correspondence, such as that she tried to run him down with her car. In our submission, \$10,000.00 for these two items is imminently reasonable.

Counsel for the Landlord said:

I believe we've addressed much of the laundry room. In page two of his evidence, it doesn't indicate that he has access explicitly in the tenancy agreement. And there's no entitlement to exclusive sole access to the laundry room – it's not part of tenancy - so any decisions about what may or may not have happened with [L.S.] are within the purview of the Landlord.

Re the engagement of [the security company] to do nightly monitoring, it was done for several months over the summer and will continue. On pages 1 to 24 of the Landlord's evidence are the company's reports. The security company didn't come across the Parties, but the reports raise questions regarding [the Tenant's] credibility of his claims. There's what [the Tenant] claims, and what the evidence shows was actually occurring. The Landlord is doing what was needed to follow up and no parties were occurring.

The Executor said:

I thought it was prudent to have independent eyes on the situation. Certainly [the Tenant] was vociferous in his comments . . .and I was hearing other comments from [L.S.]. They hired a security company. . . not to engage, they just had to note noise and activity around the property. The reports came back as nil. There are many other issues, but the breaker box was one, claiming that this is a fire hazard and no issues from fire department. A lot of claims were made, and we've been trying to work through these.

The Tenant's Counsel said:

On the first point regarding the tenancy agreement – had the deceased Landlord completed section 3 (b) – I would find it shocking that the Landlord took issue with laundry, water, . . . These were assumed to be included under this tenancy agreement. See the order from last time – it was certainly understood that this is a facility under this tenancy. I'm not sure if there's any merit in pointing to the incompleteness of written tenancy agreement.

Per the logs of the security company, these checks were done between May 21 and July 20, so we're talking about a two-month period where the checks were going on. That's roughly 720 minutes out of . . .less than 1/100th of a percent of time. Based on these very brief spot checks, it is unlikely that they were getting any picture of what was going on between these tenants. There's not much of an indication that they did anything more than walk on the property. Also add that to the many complaints regarding [L.S.] and her behaviour, which pre-date and post-date the security checks going on. She may have been modifying her behaviour when the security were present.

In terms of the services set out in the tenancy agreement, the usual place in which a landlord would indicate the services included in the rent payment is section 3 (b) of the tenancy agreement. However, this section was left entirely blank, which is inconsistent with common sense and my experience as an arbitrator. The items typically checked in such an agreement include water, sewer, garbage collection, laundry, etc. In this case, the only thing that was completed in section 3 was the amount the Tenant must pay in rent each month and to whom the rent cheques should be made out. The Parties did not complete the section indicating the date on which rent is due each month, or sub-section (b), which states what is included in the rent.

Counsel for the Landlord said:

I take [Tenant's Counsel's] point; we haven't raised any mitigation issue. I don't want to recanvas everything. We had given our evidence in October that there is some degree of participation by both individuals in the events that were occurring at the property.

The Executor said:

There is clear provocation on both sides. It's just the vile words that [the Tenant] has used against [L.S.]. That video that [Tenant's Counsel] referred to was [Tenant's] staff yelling at her, calling her a bitch, and saying she killed her husband.

I reviewed the reports from the security company, which I find did not indicate that they came across any parties or disruptive behaviour taking place during their nightly checks of the property. On at least one occasion they found wine and/or liquor bottles that were left on the bottom step of the stairs. This suggests that there was some socializing happening in the common space; however, there is no indication of whom from the residential property participated in the socializing.

A typical security company report stated the following:

Arrived on site and conducted a full exterior check up. During time of patrol there were no signs of suspicious activities or anyone lurking around the property. No signs of vandalism or property damage. No signs of parties, excessive noise, or any types of problems that may occur in the future. Site is now safe and secured. All clear.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

The Tenant has applied for compensation for his loss of quiet enjoyment of the residential property. Section 28 of the Act sets out a tenant's right to quiet enjoyment of the rental unit. Section 28 states:

Protection of tenant's right to quiet enjoyment

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*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline #6 ("PG #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.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

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.

From the extensive discussion in the two hearings in which the Parties participated, I conclude that the key issues interfering with the Tenant's quiet enjoyment of the residential property are:

- his restriction from using the laundry facilities,
- verbal and other abuses that [L.S.] inflicts, and
- the Landlord's delay in doing repairs.

However, I also find that the Tenant has contributed to the difficulty he has faced by participating in [L.S.'s] behaviour at times – swearing at her, calling her names, throwing things at her - which could aggravate her and worsen the Tenant's situation. As such, I find that the Tenant partially contributed to his situation, which detracts from his claim somewhat.

The Tenant claimed that the compensation for his loss of quiet enjoyment should reflect a one-third reduction in the value of the tenancy. The Tenant's Counsel likened compensation for a loss of quiet enjoyment to a rent reduction. As the Tenant pays \$3,000.00 per month in rent, this would, therefore, amount to \$1,000.00 off of the rent for a specified period of time.

I find that the Landlord has attempted to ensure the Tenant has quiet enjoyment of the premise, as they hired a security company to monitor the property on a nightly basis. The reports revealed that the security company did not find any sign of parties occurring during their nightly checks of the property. However, on one occasion they found wine and/or liquor bottles that had been left on the bottom step of the stairs. This suggests that there was some socializing happening in the common space; however, there is no indication of who from the residential property participated in the socializing.

However, while the Landlord was attempting to manage the situation between the Tenant and L.S. with the security checks, I find that the Landlord did very little to ensure the Tenant's ongoing access to laundry facilities. I find that the Tenant reported this as a

problem in late July 2020, and that it was still unresolved in January 2021. I find that this is an unreasonable delay in resolving the loss of a service at the residential property that I find the Tenant was granted in this tenancy. I find this is a breach of section 28 (d) of the Act on the Landlord's part.

Based on the evidence before me, overall, I find that the latter matter is a sufficient basis to grant compensation

Given the Tenant's participation contributing toward the situation in which he found himself, and the Landlord's attempt to monitor the noise levels at the residential property, I decrease the Tenant's eligibility for compensation to fifteen percent of the monthly rent for a period of six months from August 2020 through January 2021. That is \$450.00 a month for six months for a total of \$2,700.00, which I award to the Tenant from the Landlord. I also award the Tenant with recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act.

As a result, I grant the Tenant a monetary order from the Landlord in the amount of \$2,800.00, for loss of quiet enjoyment of the residential property, pursuant to sections 28 and 67 of the Act.

The Tenant's other claims are dismissed with leave to reapply.

Conclusion

The Tenant is successful in his Application in the amount of \$2,700.00, as the Tenant established that the Landlord breached section 28 of the Act by failing to protect the Tenant's right to quiet enjoyment of the residential property. The Landlord evidenced having provided some protection to the Tenant's right in this regard, which contributed to a reduction in the amount awarded to the Tenant from the amount claimed in the Application. The Tenant is also awarded the \$100.00 Application filing fee from the Landlord. The Tenant's other claims are dismissed with leave to reapply.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$2,800.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the

Act, and 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: January 27, 2021

Residential Tenancy Branch