



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RP, RR, OLC

Introduction

On October 14, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking a repair Order pursuant to Section 32 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, and seeking an Order to comply pursuant to Section 62 of the *Act*.

The Tenant attended the hearing, with A.M. attending as his advocate and D.K. attending for training purposes. M.R. and A.K. attended the hearing as agents for the Landlord. All parties in attendance, with the exception of D.K., provided a solemn affirmation.

A.M. advised that the Landlord was served the Notice of Hearing package by registered mail on October 23, 2020, and M.R. confirmed that the Landlord received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

She also advised that the Tenant’s evidence was served to the Landlord by registered mail on December 18, 2020 and that she checked to ensure that the Landlord could view the Tenant’s digital evidence, pursuant to Rule 3.10.5 of the Rules of Procedure. M.R. confirmed that the Landlord received this evidence and was able to view the digital evidence as well. As such, I have accepted the Tenant’s evidence and will consider it when rendering this Decision.

M.R. advised that the Landlord did not submit any evidence for consideration on this file.

A.M. requested that the Tenant would like to withdraw his claims for a repair Order and a rent reduction, but would like to proceed on the monetary claims on the Application. As such, this hearing primarily addressed the claims for monetary compensation. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to monetary compensation?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 1, 2000. The Tenant advised that rent was currently established at \$1,025.00 per month; however, M.R. claimed that rent was \$995.00 per month. Both parties agreed that rent was due on the first day of each month and that a security deposit of \$310.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

A.M. advised that the Tenant was seeking compensation in the amount of \$4,190.00; however, in the Application, the Tenant only requested compensation in the amount of \$2,210.00. She stated that she did not amend the Application to reflect this increase in monetary compensation. However, as she had requested to withdraw the repair Order and rent reduction claims, she advised that the Tenant was now simply seeking compensation in this Application in the total amount of **\$3,000.00**. M.R. was asked that despite the Tenant not amending the Application, if he understood the Tenant's request and would still like to proceed. As he confirmed that he was prepared to proceed on the claims for monetary compensation, the hearing continued.

A.M. advised that the Tenant was seeking compensation in the amount of **\$1,000.00** because the Landlord served the Tenant with a 10 Day Notice for Unpaid Rent (the "Notice") on April 13, 2020 despite a ban on evictions at that point due to the State of Emergency response to the COVID-19 pandemic.

The Tenant advised that it was difficult for him to explain how his loss was commensurate with \$1,000.00; however, he explained that he has been subject to negative interactions with the Landlord as far back as 10 years ago. He stated that M.R. had made inflammatory, profanity laced statements to him in the past about wanting him out of the rental unit. The Tenant hired a lawyer in 2012 to address these concerns, and since that time, the actions of M.R. have been less overt. He stated that he is afraid to live in the rental unit, that he is constantly anxious, that he has been put on medication by his doctor, and that he has made the Landlord aware of his health issues.

It is his belief that the Landlord wants him to move from the rental unit. Despite the provincial ban on evictions, the Landlord still served him the Notice. He stated that this is just another example of attempting to frustrate him out of the rental unit. He submitted that M.R. told him that the Landlord wanted the Notice to be served despite the moratorium on evictions.

A.M. advised that after this Notice was served, this was reported to the local news. In the news article submitted as documentary evidence, M.R. was quoted as saying, "Yeah, I was aware of it." when questioned if he knew that the Notice could not be served during this time period. Furthermore, when he was asked if service of the Notice would violate this imposed moratorium on evictions, he stated, "Let the Tenancy Branch get in touch with me and tell me that." She advised that this is clear evidence that M.R. served the Notice blatantly in violation of the moratorium on evictions, and in spite of his own knowledge that he was not permitted to do so.

M.R. advised that the Tenant was the only resident of the building not to pay rent in April 2020. He stated that the Landlord directed him to give the Notice so that it would be on the Tenant's file. He stated that when he served the Notice, he explained to the Tenant that it was not an eviction Notice that could be enforced at this time. As well, he stated that he explained to the news reporter that it was not a binding Notice.

During this portion of the hearing, he initially confirmed that he knew that there was a ban on evictions, but he chose to serve the Notice anyways. He then altered his testimony and stated that the Landlord knew that the Notice could not be served at this time, but he was directed by the Landlord to serve it anyways. He claimed that he

suggested to the Landlord that this was “not the way to go”, but the Landlord wanted it served so that it was on the Tenant’s record.

A.M. advised that the Tenant is seeking compensation in the amount of **\$2,000.00** for loss awardable under Section 67 of the *Act* due to stress and anxiety that the Tenant has suffered. The Tenant advised that there were multiple requests made to the Landlord about required improvements to the rental unit, but the Landlord wanted the Tenant to pay for them. As well, any repair requests have taken years to complete.

He stated that he had an incident with the neighbour below him in June 2010, which he reported to M.R. He submitted that M.R. told him, in a profane manner, to call the police or vacate the rental unit. He stated that he called the police and attempted to deal with the downstairs tenant in a measured manner. Due to his perceived loss of quiet enjoyment, he enlisted the help of a lawyer and a warning letter was issued to the Landlord, dated May 18, 2012.

After receiving this letter, the Tenant advised that the actions of the Landlord and M.R. became “less overt”. Repair requests made by the Tenant to the Landlord took an unreasonable amount of time to complete. The Tenant stated that in 2016, a tenant and their family moved into the unit next to him and one member of that family suffered from mental illness. This person would angrily shout “I hate you” to the Tenant. This family would make a lot of noise and keep the Tenant up at night. While he did not have any evidence advising the Landlord of these issues, as there was no remedy offered by the Landlord, the Tenant proposed to move to a less desirable rental unit in the building. However, the Landlord wanted to charge the Tenant \$100.00 more per month to do so. He did not apply for Dispute Resolution to have this situation rectified as these tenants eventually moved in 2018.

The Tenant referenced a doctor’s note that was submitted as documentary evidence, and he believes this supports his position that the Landlord’s or M.R.’s behaviours since at least 2010 have caused him anxiety to the point that he has been prescribed medication. When he received the Notice on the door, his anxiety went “through the roof” as he believed it was “bad news”. When he advised M.R. of his mental state, he submitted that M.R. was “unreceptive and cold”. He stated that he requested that he be allowed to have a therapy dog from the Landlord, but this was denied. He also stated that M.R. demanded that he remove a bird feeder because it was soiling the downstairs neighbour’s windows; however, he spoke with this neighbour and asserts that this person never complained to the Landlord.

He stated that it was his belief that the Landlord's actions, or inaction, are attempts to drive the Tenant from the rental unit. While he could not explain how he justified compensation in the amount of \$2,000.00, he again reiterated that he has been on medication to deal with the resultant anxiety, that he is afraid to have guests visit, and that his right to quiet enjoyment of the rental unit has been breached by this ongoing, bullying behaviour.

M.R. advised that he has been the building manager for 30 years and that he addresses any complaint directly with the tenants of the building. He stated that the Tenant has a history of not getting along with other tenants of the building. On one occasion, he served an inflammatory note to a tenant that he believed was burning incense and causing noise. He stated that the Tenant befriended another tenant in the neighbouring unit; however, they had a falling out and the Tenant then made complaints for years about this other tenant making an unreasonable amount of noise. He attempted to mediate this conflict and this other tenant eventually moved out.

He refuted that he ever swore at the Tenant and he stated that he does not swear at any of the tenants in his building. He disagrees with the Tenant's allegations of him using profane comments and he stated that he has never attempted to evict the Tenant at any point. He stated that the Landlord has made repairs as requested by the Tenant; however, the Landlord will not re-do repairs if the Tenant simply does not enjoy the aesthetic of the repair. Regarding the request to the Tenant about removing the birdfeeder, he stated that the tenant below complained of the birds soiling the windows.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 28 of the *Act* outlines the Tenant's right to quiet enjoyment and states that a Tenant is entitled to reasonable privacy and freedom from unreasonable disturbance.

Furthermore, with respect to the Tenant's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the

evidence provided.” In essence, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Furthermore, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

Finally, Policy Guideline # 5 outlines a party’s requirements to minimize loss and states the following:

A person who suffers damage or loss because their landlord or tenant did not comply with the *Act*, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;
- promptly report the damage and leak to the landlord and request repairs to avoid further damage;
- file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

With respect to the Tenant’s first claim for compensation in the amount of \$1,000.00 because the Landlord served the Notice despite the eviction moratorium, the undisputed evidence is that the Landlord was not permitted, by law, to serve this Notice at this time. I find it important to note that during the hearing, M.R. acknowledged that he was aware that he was not permitted to serve the Notice but did so anyway. He then altered his testimony and testified that he actually advised the Landlord that the Notice could not be served; however, it was the Landlord that ordered him to serve it despite the ban on

evictions.

When taking this inconsistent testimony into consideration, I find this causes me to be doubtful of the credibility of M.R. submissions. Furthermore, in conjunction with his statements to the news that he was aware that the Notice could not be served and to “Let the Tenancy Branch get in touch with me and tell me that.”, I am satisfied that he served this Notice intentionally and blatantly contrary to the legislation despite the knowledge that it was not appropriate to do so. I find that the hostility of M.R.’s statements lends more weight to the Tenant’s position that there is a pattern of behaviour elicited from the Landlord and/or M.R. against the Tenant.

When assessing the Tenant’s claim in the amount of \$1,000.00, I find it important to note that he has provided little evidence to corroborate how his loss was commensurate with the amount that he was seeking. While I acknowledge that he suffers from anxiety and that the actions of the Landlord and/or M.R. may have contributed to this, I am not satisfied that the Tenant has provided sufficient evidence that his anxiety has solely been caused by the Landlord or M.R.

I also find it important to note that this Notice was clearly not enforceable and could simply be ignored by the Tenant. I acknowledge that receiving this Notice would likely have contributed to unnecessary stress at an already unusual and taxing time amidst a pandemic, given that this Notice carried no weight and was essentially a meaningless nuisance, I find that service of this one-off Notice amounted to more of an intentional aggravation on the part of the Landlord or M.R. While I am not satisfied that the Tenant has provided sufficient evidence to support the amount that he is claiming for, I am satisfied that the Landlord or M.R. served this Notice defiantly, and intentionally in an effort to antagonize the Tenant. As such, I grant the Tenant a monetary award in the amount of **\$300.00**, which I find to be commensurate with a loss that the Tenant has justified with his evidence.

Regarding the Tenant’s second claim for compensation in the amount of \$2,000.00 because of a loss of quiet enjoyment of the rental unit due to ongoing issues with the Landlord and/or M.R., given my above findings, I am satisfied that service of the Notice was deliberate and knowingly not enforceable. Furthermore, combined with the Tenant’s evidence that he had a letter sent to the Landlord in 2012 warning the Landlord of M.R.’s “bullying” behaviour, I am also satisfied that this antagonistic behaviour in the past more likely than not occurred. While the Tenant claims since then that this behaviour has been less “overt”, I find it important to note that the Tenant could have taken further steps to have any of his alleged issues addressed through Dispute

Resolution over the last ten years, if they were ongoing and if the Landlord did not correct any issues after being warned by the Tenant in writing.

Had the Tenant truly been affected by the actions, or lack of actions, by the Landlord or M.R. over the last ten years, he could have mitigated this loss by having them addressed at any point in the last decade via Dispute Resolution. By doing so, a successful outcome would have negated any alleged increase in anxiety as well. However, the Tenant took no action to have his concerns addressed by the Landlord if it was his belief that the Landlord was being negligent. While I acknowledge that the Tenant might be frustrated with how he perceived he was being treated, I find that this lack of action causes me to doubt the reliability of the Tenant's claims of his true loss over this period of time. As a result, I do not find that the Tenant adequately minimized any loss that he might have suffered over this time, and I dismiss this claim in its entirety.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$300.00**, and the Tenant is permitted to withhold this amount from the next month's rent.

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: January 16, 2021

Residential Tenancy Branch