



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT OLC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for loss or other money owed under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the Act.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenants' dispute resolution application ('Application'). In accordance with section 89 of the Act, I find that the landlord was duly served with the Application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were received in accordance with section 88 of the Act.

At the outset of the hearing, the tenants confirmed that they had moved out on December 31, 2020. As the tenant has ended, the tenants' application for the landlord to comply with the Act and tenancy agreement is cancelled.

Issues

Are the tenants entitled to a monetary order for compensation for loss or money owed under the Act, regulation or tenancy agreement?

Are the tenants entitled to recover the cost of the filing fee from the landlord for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on October 1, 2020, and ended on December 31, 2020. Monthly rent was set at \$1,200.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$600.00, which was returned to the tenants.

The tenants are making a monetary claim in the amount of \$2,400.00, which is the equivalent of the return of their October and November 2020 rent, plus recovery of the \$100.00 filing fee paid for this application. The tenants testified that they were subjected to ongoing harassment by the landlord and her son, which caused them significant stress and worry, and have affected their mental health.

The tenants testified that the landlord took issue with everything they did, which included normal every day activities like cooking and normal levels of noise. The tenants testified that the landlord did not approve of the fact that the tenants were working from home, and would make disparaging comments towards the tenants. The tenants testified that they would receive constant phone calls, which interfered with their quiet enjoyment and ability to work.

Both parties confirmed that the tenants were served with a typed document from the landlord titled "60-Day Notice of Termination of Tenancy" dated October 31, 2020. The document stated that the landlord was terminating the tenancy in order for a close family member to move into the rental unit as the landlord requires a caregiver after her surgery scheduled for January 2021.

The tenants testified that they decided to move out instead of disputing the "60-Day Notice" as they could no longer handle the level of stress and harassment by the landlord. The tenants submitted multiple recordings, voicemail recordings, and evidence to support the harassment from the landlord and her son.

The landlord disputes the tenants' claims, and testified that she liked the tenants very much. The landlord testified that she had only ended the tenancy as she required the suite for her son, who would be attending to after her surgery. DP attended the hearing to confirm this. The landlord testified that the tenants had only filed their application on November 2, 2020 after she had served them with the Notice to End Tenancy.

The landlord testified that excessive noise and disturbance had come from the tenants' suite, which included sanding late at night. The landlord also testified to unknown chemical like odours, which affected her health and caused her concern and distress.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which 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.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the

Act on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Furthermore, section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

I have reviewed the evidence and testimony before me, and I find that considering the fact that the landlord resided upstairs in the same home, the landlord exhibited a low level of tolerance towards the daily activities of the tenants, such as noises and smells. Although I sympathize with the landlord that she suffers from medical conditions that make her sensitive towards such disturbances, I do not find that the evidence supports that the tenants had contravened the *Act* and tenancy agreement during this tenancy. I find that the landlord made it clear with numerous phone calls during this short tenancy that she did not approve of the noise or smell that originated from the tenants or their rental unit, regardless of the source or whether the tenants were in fact engaged in any activity that would be considered unreasonable. In fact, I find that the phone conversations and text messages in evidence support the tenants’ testimony that the landlord’s actions had significantly interfered with their right to quiet enjoyment and their rights to enjoy the rental unit as they were frequent, and included demands that the tenants refrain from using facilities that they had the right to use such as the bathroom fan, or the right to cook.

Although perhaps unintentional, I find that the behaviour of the landlord would constitute a level of harassment that cannot be considered reasonable. I find that instead of providing the tenants with written warnings, or instead of filing an application for dispute resolution, the landlord and her son decided to address issues by way of numerous phone calls and text messages. I find that the form, content, and quantity of these messages, combined, affected the tenants’ ability to live in the rental unit, and the use of their home for reasonable and lawful purposes, free from significant disturbance as set out in section 28 of the *Act* as noted below:

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...

(b) freedom from unreasonable disturbance;...

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

As I find that the landlord did infringe on the tenants' right to quiet enjoyment, I must now consider whether the tenants are entitled to the monetary compensation requested. As stated above, the tenants bear the burden of proof in supporting the actual value of their loss, and that this loss stemmed directly from the other party's violation of the tenancy agreement of the *Act*.

The tenants requested compensation equivalent to two month's rent. In addition to other damages such as a rent reduction, an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. However, unlike punitive damages, the conduct of the wrongdoer need not contain an element of wilfulness or recklessness in order for an award of aggravated damages to be made. All that is necessary is that the wrongdoer's conduct was highhanded. The damage must also be reasonably foreseeable that the breach or negligence would cause the distress claimed.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought. The damage award is for aggravation of the injury by the wrongdoer's highhanded conduct.

Although I sympathize with the tenants and the fact that they suffered greatly during this tenancy, I find that they did not establish how the amount of the damage award was obtained, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the damages the tenants are seeking in this application.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if

proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

As noted above I find that the landlord's actions had significantly impacted the tenants' right to quiet enjoyment during this tenancy. I find that the tenants faced extreme distress as a result of the landlord's actions. However, I do not find that any significant loss has been proven.

As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the tenants compensation in the amount of \$200.00 in nominal damages for the distress they faced during this tenancy.

As the tenants were successful in their application, I allow the tenants to recover the filing fee for this application.

Conclusion

As the tenancy has ended, the tenants' application for the landlord to comply with the *Act* and tenancy agreement is cancelled.

I issue a \$300.00 Monetary Order in favour of the tenants, which includes a monetary award for the loss of quiet enjoyment the tenants suffered during this tenancy and recovery of the filing fee.

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of 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: February 18, 2021