Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $6,900 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 2:26 pm in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 pm. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified she served that the landlord with the notice of dispute resolution form and supporting evidence package via registered mail on November 19, 2020. The tenant provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. She testified that it was returned to her marked "refused". She submitted a photograph of the returned envelope into evidence supporting this. Section 89 of the Act only requires that an item be mailed to the recipient for service to be satisfied. It does not require that the recipient accept the package. As such, per section 90 of the Act, I deem the landlord has been served with the required materials five days after they were mailed (November 24, 2020).

I note that section 90 creates only a rebuttable presumption of service. However, in this instance, I find that the facts do not support rebutting such a presumption. As the package was refused, I find that the landlord resides at the address it was sent to. If the landlord did not reside at the address the package was sent to, it would have been returned to the send with a note indicating as much. A refusal of service does not allow the landlord to escape the dispute resolution process.

Issues to be Decided

Is the tenant entitled to:

1) a monetary order of $7,000;
2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenant, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting August 15, 2019 and ending on August 15, 2020. Monthly rent was $2,450 plus utilities (including water, heat, and electrical) and is payable on the first of each month. The tenant paid the landlord a security deposit of $1,225 and a pet damage deposit of $1,225. The tenancy ended on August 15, 2020, although the tenant testified, she moved out about a week early. The landlord was ordered to return a portion of the deposits at a prior arbitration (the tenant testified that she had yet to do this).

The tenant testified that the rental unit is the upper unit in a single detached home (the "**House**"). Aside from the rental unit, the House contains two other units. The landlord resides in one of them. The other is also a rental unit.

The tenant testified that she resides in the rental unit with her common-law partner ("**JB**") and two roommates ("**TR**" and "**BK**") for whom she provides medical support. TR and BK are disabled and require constant medical care. The tenant is an independent contractor hired through a supportive care company to provide comprehensive in-home care for TR and BK.

The tenancy itself was troubled, mired in disputes between the parties. This is the fourth dispute between the parties to come before the Residential Tenancy Branch (the "**RTB**"). The first two applications were the tenant's applications for, in part, orders for the landlord to comply with the Act and turn the hot water back on. These applications did not include a claim for monetary compensation in connection with this termination of this service. The third application was made by the landlord for a monetary order of damages of over $10,000 and to keep the deposits in partial satisfaction of this amount. The presiding arbitrator found that the landlord was entitled to roughly $1,000 in compensation and ordered that this amount be deducted from the deposits and the balance returned.

In the present application, a portion of the tenant's monetary claim is based on this termination of hot water.

The tenant provided two bases for her monetary claim:

1) loss of quiet enjoyment of the rental unit due to the conduct of the landlord towards her and the other occupants of the rental unit including:
    a. turning off hot water on multiple occasions
    b. abusive conduct towards the tenant; and
    c. "creating a climate of fear" in the rental unit; and
2) costs incurred by the tenant as a direct result of the aforementioned conduct.

The tenant claims an amount equal to the last two months' rent ($4,900) in compensation for loss of quiet enjoyment, and $2,000 in expenses.

Landlord's Conduct

The tenant provided a comprehensive timeline of events that, at the hearing, she affirmed to be true. In January 2020, the landlord left for Europe. She returned on May 30, 2020. On June 1, 2020, she came to front door of the rental unit as the tenant was leaving and accused the tenant of using her extension cord in the garage (which is a common area) while she was away. The tenant denied doing this. The tenant noted that the landlord broke the self-isolation protocols by coming to speak with her face to face the day after she returned from Europe. She testified that TR and BK are elderly and vulnerable to COVID-19. She was worried that the landlord's conduct would endanger their health.

During the COVID-19 pandemic, the home care company organized in-person weekly visits with BK. These visits took place outside on the House's lawn and were socially distant. The tenant testified that on three separate occasions (June 11, June 22, and July 7) the landlord made the staff feel uncomfortable by video-taping them, getting in her car and driving down the driveway past them, circling the cul-de-sac and then returning to park the car. The staff then requested to change the location of the BK's visits due to the landlord's conduct.

The tenant testified that these were not the only time that the landlord acted inappropriately towards people she invited onto the residential property:

1) on June 22, the landlord videotaped the tenant having a socially-distant visit with a neighbour at the end of the driveway;
2) on July 6, the tenant was selling her bedframe on Facebook marketplace. The purchaser attended the rental unit and went inside, leaving her children in the car. While the purchaser was inside, the landlord went to the car and questioned the children why they were there. She then told them the tenant was a thief, and that the House is a strata and that the tenant is not allowed to sell anything. She demanded the children's phone number and told them that she was recording them with her phone. The purchaser returned to the car and was very upset with the landlord. The purchaser called the tenant after the fact to recount what happened, and when she returned to rental unit to pick up the bedframe, she told the tenant she left her eldest child at home because he was "really shook up" by the incident. The tenant was embarrassed; and

3) on July 26, the tenant sold a chair online. When the purchasers attended the rental unit, the landlord stood outside and watched them for the entire transaction. The tenant and the purchaser ignored her.

Throughout June and July 2020, the landlord repeatedly accused the tenant of various misdeeds, all of which the tenant denied. Aside from the extension cord example above, the landlord accused the tenant:

1) on June 4, of being responsible for loud noises, despite the fact there is construction work occurring behind the House;
2) on June 11, of following her because she noticed the garage light was turned off;
3) on June 17, of allowing a neighbour onto the property to steal $2,000 of gardening supplies;
4) on June 20, of assaulting her in front of a plumber (the tenant recorded the conversation, which was submitted into evidence, and the plumber confirmed that she did not assault the landlord);
5) on July 10, of causing an unreasonable disturbance. The landlord threatened to remove the tenant's door at 8:55 pm (the tenant and TR were having a tickle fight);
6) on July 13, of shooting flames of the balcony on July 10;
7) on July 15, of pushing her causing her to fall backward on concrete;
8) on July 26, of sneaking maggots into her kitchen;
9) on August 4, "putting bugs in her body" and called the police (who attended the House) and told them that JR broke her nose on the weekend (while she had no cuts or bruises on her face); and
10) on August 10 (after the tenants vacated the rental unit), of having people over to the rental unit at 11:30 pm and not locking the door.

The tenant denied that any of these accusations were true.

The tenant testified that the since the landlord left for Europe there was a chronic hot water shortage in the House. The landlord did not leave an emergency contact number, so the tenant could not call anyone to have it addressed. She testified that she and the occupant of the other rental suite worked out a showering and bathing scheduling to avoid running of hot water.

Upon the landlord's return, the tenant asked the landlord to address the issue, and the landlord attributed the shortage to the tenant's use of the jacuzzi tub in the rental unit's bathroom. The landlord demanded that the tenant disconnect the bathtub so that House can return to having sufficient hot water. The tenant refused, stating that it was not a problem before, and that she was entitled to use of the bathtub as it was included in the rent. She also noted that she pays the water bill for the entire house, per the tenancy agreement.

Despite this refusal, the tenant testified that the landlord sent plumbers to the rental unit to disconnect the bathtub. Plumbers attended the rental unit on June 15 (without

notice), June 20 (with notice, which indicated they would be turning off all water to the rental unit), on July 7 (uncertain if notice was provided), and on July 13 (no notice, the tenant was not home, but BK was, and was startled by the plumber's entry).

The tenant noted that the landlord was not permitted to enter the rental unit, except in the case of emergencies, until June 23, 2020, due to the COVID-19 restrictions.

The tenant testified that the landlord managed to shut the water off to the rental unit on two separate occasions, the first from July 8 to July 12 (the tenant provided a video where the landlord admitted to doing this) and then again from August 1 to 3. She testified that the landlord enabled cold-water only on August 4 and then returned hot water service to the rental unit on August 5.

The tenant testified that she contacted the municipality, who advised her that the House's annual water usage was actually less than it had been the prior year (the tenant was able to obtain this information as the water bill was in her name). She testified that she later discovered the reason for the lack of hot water was because the landlord had put the hot water tank in "vacation mode" at some point prior to leaving for Europe, which reduced the amount of hot water stored and the temperature it was stored at in the tank.

The tenant testified that the landlord assaulted, or threaten to assault, her on multiple occasions:

1) On June 27, following an argument between the tenant and the landlord instigated by the landlord video-taping a socially distant visit between the tenant and her friend, which the devolved into a debate as to whether the tenants had to move out at the end of the term of the fixed term tenancy, and the discussion of about the lack of hot water, the landlord closed the conversation by saying "if you were my daughter, I'd knock your teeth out". The tenant provided an audio recording of this interaction.
2) On July 24, the landlord swung a large board at the tenant hitting the chain link fence between them following a confrontation where the landlord admitted to throwing out some of the tenant's possessions which were left outside, which caused the tenant to call her "nuts". The tenant then took her phone out to film the incident and the landlord picked up the board and swung at the tenant again. The tenant submitted this video into evidence.
3) On August 1, the tenant went to the landlord's unit to confront her about cutting the water off entirely to the rental unit. The tenant stood in the doorway and demanded that it be turned back on. Following a terse argument, the landlord slammed the door on the tenant's arm (the tenant was standing in the doorway) and kept shoving the door closed while the tenant yelled at her to open it. The tenant provided two videos (one taken by her, the other by JR) of this entire interaction. The tenant's arm was visibly bruised after (she submitted photos of the bruising into evidence).

4) On August 8, in a lengthy text message to the tenant, relating to the move-out condition inspection walkthrough, the landlord demanded that the tenant have an agent attend the walkthrough on her behalf, described the tenant as “the biggest evil I have ever met”, and wrote “you ded me harm almost death and yet you want to bring [neighbour she accused of stealing gardening supplies] to rub into my face. Try me mother fucker that my be your last try, I heard you and [JR] giggling when you did something to me you thing that was funny just wait you will have a teast of pain. I am not a tree without branches.” [as written]

The tenant testified that the landlord’s conduct caused her to worry for her safety and of the safety of BK and TR.

Additionally, and as alluded to above, the landlord repeated took the position that, at the end of the term of the tenancy agreement, the tenants must vacate the rental unit, despite the fact the tenant (correctly) advised her that the Act states that a fixed term tenancy converts into monthly to month tenancy once the term has ended. Despite this, the landlord brought a family over to the rental unit on July 7, 2020, ostensibly to view it for renting. The tenant denied their entry. The husband then told the tenant that he was a private investigator hired by the landlord. The tenant submitted a video of the individual admitting to be a private investigator.

The tenant testified that, although she did her best to shield BK and TR from the landlord’s outbursts and conduct, but that they could not help but overhear and observe the verbal attacks on the tenant. She testified that the TR and BK get very upset overhearing the yelling and swearing of the landlord and that they act out as a result (BK cries, and TR “rips his jeans”).

The tenant testified that, on July 1, 2020, BK was crying in her room and told her that she did not feel comfortable in the house because she didn’t like the landlord picking on the tenant.

The tenant testified that BK, on multiple occasions, woke up in tears, having nightmares about the landlord’s conduct (she submitted a video of one such occurrence on July 11, 2020, where BK had a nightmare about the landlord entering her room). The tenant testified that BK had never exhibited such behavior prior to moving into the rental unit.

The tenant also testified that the landlord got angry with TR for improperly (in the landlord’s view) sweeping the deck. The tenant provided a video of this incident.

Because of the negative effects the landlord’s conduct was having on TR and BK, and because the landlord had turned off the water to the rental unit and they could not be properly bathed, the tenant, in consultation with the agency she was contracted by to provide care for TR and BK, determined it was in the best interest of TR and BK to remove them from the rental unit as soon as possible. The tenant testified that moving patients on short notice is very difficult, and that she was only able to secure emergency

respite care from July 13 to July 21, 2020 at a cost of $125 per day per patient ($2,000 total). She testified that she would have placed them in respite care for longer, but that was all that was available. She testified that she paid the cost of the temporary respite care herself. She submitted an invoice from the respite caretakers for $2,000.

On July 22, 2020, the tenants told the landlord that, per her wishes, they would vacate the rental unit at the end of the fixed term (August 15, 2020). She testified that she and JR decided to vacate even sooner due to the water being shut off from August 1 to 3 and due to the landlord slamming the door on the tenant's arm.

Analysis

Residential Tenancy 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.
>
> (the "**Four-Part Test**")

Section 28 of the Act 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.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

> 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. In most circumstances this is the person making the application.

So, the tenant must prove it is more likely than not that the landlord breached the Act by depriving her of her right to quiet enjoyment, that the tenant suffered a quantifiable loss as a result of this breach, and that the tenant acted reasonably to minimize her loss.

Additionally, RTB Policy Guideline 6 states:

> **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 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.

The tenant is seeking a 100% reduction of June and July 2020 rent as compensation for the loss of quiet enjoyment she suffered as a result of the landlord's actions.

Additionally, the tenant is seeking $2,000 in compensation for expenses she incurred as a result of the landlord breaching the Act by depriving her of the quiet enjoyment she was entitled to and by cutting of the water to the rental unit entirely and then by cutting off the hot water.

I will address each of these two claims in turn.

1. <u>Compensation for loss of quiet enjoyment</u>

I accept the entirety of the tenant's uncontroverted testimony as true. I found her to be a credible witness. Much of her testimony and written submissions were confirmed by video and audio evidence. This corroboration has the effect of enhancing the credibility of all of her evidence. Based on the conduct on the landlord captured in the video and audio recordings, I have little difficulty accepting that the landlord acted as described by the tenant on those occasions when the tenant did not have her camera running.

The actions of landlord during June and July can broadly be broken into four categories: accusations, assault, denial of services, and harassment of guests. The actions in any one of these categories would be sufficient to give rise to a claim for loss of quiet enjoyment. The actions of in all four of these categories serves to amplify the magnitude of the tenant's loss of quiet enjoyment.

I find the repeated accusations made by the landlord against the tenant amount to unreasonable disturbances. There is nothing in the evidentiary record to support the accusations. I find that a reasonable person, subjected to numerous serious accusations of impropriety, would be disturbed by them.

I find that the landlord assaulted the tenant by closing the door on her arm, and by not opening it when the tenant made it clear her arm was caught in the door. This amounts to an unreasonable disturbance. I find that the tenant was also unreasonably disturbed by the repeated threats of assault (including the swinging of a board at the tenant).

I find that the landlord deprived the tenant of the ability to use the yard (a common area) free from significant interference by acting in a manner which made BK's weekly visitor so uncomfortable that she asked to move the meetings to another location. The landlord's conduct was designed to make the visitor feel unwelcome and bordered on intimidation.

I accept that the landlord cut the water off entirely to the rental unit from July 8 to July 12 and again from August 1 to 3.

Section 27(1) of the Act states:

> **Terminating or restricting services or facilities**
> **27**(1) A landlord must not terminate or restrict a service or facility if
> (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
> (b) providing the service or facility is a material term of the tenancy agreement.

RTB Policy Guideline 22 states:

> An "essential" service or facility is one which is necessary, indispensable, or fundamental.

I find that the running water meets the definition of an "essential" service or facility. It is necessary for drinking, bathing, laundering, cleaning, and toileting. Its importance is amplified by the fact that the tenant was provided care for two individuals who cannot do many of these tasks without assistance and who cannot readily go elsewhere to do them either.

I find that the landlord cutting off the water for these periods of time deprived the tenant of the ability to undertake these essential activities, and amount to an unreasonable disturbance to her daily routine. Additionally, by cutting off the water, the landlord breached section 22 of the Act.

On balance, I find that the tenant was repeatedly and significantly deprived of her right to quiet enjoyment of the property by the landlord throughout June and July 2020. The loss of quiet enjoyment is not limited to the time when the events described above occurred. Rather, due to their frequency and severity, they cast a pall over the entirety of the tenancy and undoubtably caused the tenant and occupants of the rental unit a great deal of stress, anxiety, and, in the case of BK at least, fear.

Due to the prolonged and serious nature of the disturbances I find that the tenant is entitled to a significant rent reduction for the months of June and July. However, she is not entitled to the return of 100% of her rent. Notwithstanding the landlord's conduct, during June and July, the tenant had shelter, a place to sleep, eat, and store her belongings, however unpleasant it was. These benefits she received necessitate a minimal level of compensation to the landlord. In the circumstances, I find it appropriate to retroactively reduce the tenant's rent by 80% for the months of June and July. As such, I order the landlord to pay the tenant $3,920.

2. Compensation for Damage

As stated above, I find that the actions of landlord amount to a breach of section 28 of the Act. This satisfies the first part of the Four Part Test.

I find that, as a direct result of the landlord's ongoing misconduct, culminated by the landlord's decision to cut the water off to the rental unit on July 8, 2020 directly led the tenant to the decision to place the BK and TR into temporary respite care. I accept that the tenant paid $2,000 for this care. This satisfies the second and third parts of the Four-Part Test.

I find that the tenant acted reasonably to minimize her loss. I find the cost of the respite care to be reasonable, given the short time frame the tenant had to obtain it. I find that the act of relocating BK and TR to respite care itself was a reasonable decision as well. The tenant kept BK and TR in the rental unit through all of June and part of July, notwithstanding the fact that the landlord's conduct was negatively affecting them. It was only when the landlord cut off water entirely to the rental unit that the tenant determined it necessary to relocate TR and BK.

Despite the fact that TR and BK went into respite care the day after the landlord turned the water back on, I do not find the decision to relocate TR and BK was unreasonable. The relocation was not undertaken to ensure that they had access to water. Rather, the cutting off of the water was the proverbial straw that broke the camel's back. I find the

relocation of TR and BK was not due to any one act of the landlord, but rather due to the landlord's conduct in its totality.

I find that the tenant acted reasonably to minimize her loss. This satisfies the fourth part of the Four-Part Test.

The tenant is entitled to recover the entire amount of BK and TR's respite care ($2,000) from the landlord.

Pursuant to section 72(1) of the Act, as the tenant has been successful in the application, she may recover their filing fee from the landlord.

Conclusion

Pursuant to sections 65, 67, and 72 of the Act, I order that the landlord pay the tenant $6,020, representing the following:

Description	Amount
Compensation for loss of quiet enjoyment	$3,920.00
Cost of respite care	$2,000.00
Filing fee	$100.00
Total	**$6,020.00**

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: March 9, 2021

Residential Tenancy Branch