



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, MNDCT, LAT, OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 11, 2021 (the “Application”). The Tenant applied as follows:

- To suspend or set conditions on the Landlord's right to enter the rental unit
- For compensation for monetary loss or other money owed
- For authorization to change the locks to the rental unit
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Tenant appeared at the hearing with S.E. and J.Z. S.E. was originally named as a tenant on the Application; however, as explained below, I find S.E. to be the Tenant's roommate. J.Z. appeared to assist the Tenant given a language barrier. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant, S.E. and J.Z. I told the Tenant, S.E. and J.Z. that they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant, S.E. and J.Z. provided affirmed testimony.

J.Z. advised that the Tenant has agreed to move out of the rental unit January 15, 2022. J.Z. advised that the Tenant is only proceeding with the following claims:

- To suspend or set conditions on the Landlord's right to enter the rental unit
- For compensation for monetary loss or other money owed
- To recover the filing fee

J.Z. advised that the Tenant is withdrawing the remaining claims.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant's evidence.

J.Z. testified that the hearing package and Tenant's evidence were sent to the Landlord December 17, 2021 at the rental unit because the Landlord is currently living at the rental unit. The Tenant submitted receipts with Tracking Number 1 on them and J.Z. confirmed these relate to the hearing package and Tenant's evidence. I looked Tracking Number 1 up on the Canada Post website which shows notice cards were left in relation to the package December 20, 2021 and December 28, 2021 and that the package was returned to the sender.

Based on the undisputed testimony of J.Z., receipts and Canada Post tracking information, I am satisfied the Landlord was served with the hearing package and Tenant's evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "*Act*"). The Landlord cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the *Act*, the Landlord is deemed to have received the hearing package and Tenant's evidence December 22, 2021. I also find the Tenant complied with rule 3.1 of the Rules in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant, S.E. and J.Z. were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence submitted and all testimony provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit?
2. Is the Tenant entitled to compensation for monetary loss or other money owed?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Tenant submitted three pages of a written tenancy agreement. J.Z. testified that the written tenancy agreement is between the Tenant and Landlord. J.Z. testified that the Tenant rented the entire rental unit which is a house. The tenancy started April 15, 2021 and is for a fixed term ending April 15, 2022. Rent is \$1,750.00 per month due on the 15th day of each month. The Tenant paid a \$1,750.00 security deposit. The written tenancy agreement is signed by the Tenant and Landlord.

An issue arose during the hearing about whether S.E. is a tenant or occupant of the rental unit. J.Z. testified as follows. S.E. is not named on the written tenancy agreement. The Tenant let S.E. move into the rental unit. The Tenant told the Landlord they had let S.E. move into the rental unit and the Landlord was fine with this. The Tenant and Landlord did not discuss whether S.E. would pay rent to the Tenant or Landlord. No further written tenancy agreement was completed to add S.E. as a tenant of the rental unit. There is no documentation submitted about S.E. being a tenant of the rental unit.

J.Z. testified as follows in relation to the requests to suspend or set conditions on the Landlord's right to enter the rental unit and for compensation for monetary loss or other money owed.

The rental unit is a house. The Tenant rented the entire house from the Landlord. The Landlord told the Tenant they would be out of the country during the tenancy. On November 03, 2021, the Landlord returned from out of the country and moved into the rental unit. The Landlord did not give any indication of how long they would be living in the rental unit when they arrived November 03, 2021. The Landlord is currently living in the rental unit in the downstairs suite. The Tenant and Landlord are not sharing bathroom or kitchen facilities because these facilities are in both the upstairs and downstairs suites. The Landlord comes up into the upstairs suite; however, is not supposed to. The Tenant is seeking an order that the Landlord vacate the rental unit until the end of the tenancy and only enter the rental unit in accordance with the *Act*.

The Tenant is seeking compensation in the amount of \$3,966.67 due to the Landlord moving into the rental unit which is a breach of the tenancy agreement.

The Tenant has suffered loss because of the Landlord's breach. The Landlord has caused a lot of conflict and tension by moving into the rental unit. The Landlord has

caused police to attend the rental unit. The Landlord's friends have verbally assaulted and harassed the Tenant. The Landlord has shown racism towards S.E. The Landlord took away the Tenant's access to internet by changing the password. The Tenant has experienced stress due to the Landlord moving into the rental unit. Police told the Landlord to stay downstairs in the rental unit; however, the Landlord comes upstairs daily.

The Tenant has calculated the amount of compensation sought based on the daily rent amount since November 03, 2021 when the Landlord moved into the rental unit. The amount sought also includes return of the security deposit.

The Tenant has stopped verbalizing their disagreement with the Landlord coming upstairs because this simply escalates into a screaming match or argument. The Tenant has tried to keep the peace as much as possible.

The Tenant submitted written submissions, text messages, emails and the tenancy agreement.

Analysis

S.E. as tenant or occupant

I am not satisfied based on the evidence provided that S.E. is a tenant of the rental unit because S.E. is not named on the written tenancy agreement between the Tenant and Landlord and there is no other documentary evidence before me to support that S.E. is a tenant. Further, I accept that the Tenant rented the entire rental unit, which is a house, and that it is the Tenant who let S.E. move into the house. In the circumstances, I find it more likely that S.E. is the Tenant's roommate and that there is no contractual relationship between S.E. and the Landlord. Given this, I have removed S.E. from the style of cause as S.E. does not have any rights or obligations pursuant to the tenancy agreement between the Tenant and Landlord.

Security deposit

As explained to the Tenant and J.Z. at the hearing, I cannot deal with return of the security deposit prior to the end of the tenancy and therefore this issue has not been addressed in this decision.

Is the Tenant entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit?

Section 28 of the *Act* states:

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.

Section 29 of the *Act* states:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
 - (d) the landlord has an order of the director authorizing the entry;
 - (e) the tenant has abandoned the rental unit;
 - (f) an emergency exists and the entry is necessary to protect life or property.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

Section 62(3) of the *Act* states:

- (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

I accept the undisputed testimony of J.Z. that the Tenant rented the entire rental unit, which is a house, from the Landlord. As stated in section 28(c) of the *Act*, when the Tenant rented the house, the Tenant became entitled to exclusive possession of the house subject only to the Landlord's right to enter the house in accordance with section 29 of the *Act*. The Landlord is not permitted to move into the house during the tenancy while the Tenant continues to be entitled to exclusive possession of the house.

I accept the undisputed testimony of J.Z. that the Landlord moved into the house November 03, 2021 and find that the documentary evidence supports this. I find the Landlord breached the tenancy agreement as well as sections 28 and 29 of the *Act* by moving into the rental unit during the tenancy while the Tenant continues to be entitled to exclusive possession of the rental unit. I find the breach by the Landlord egregious because exclusive possession of a rental unit is one of the main purposes of, and is at the core of, a tenancy agreement.

Given the breach by the Landlord, I am satisfied the Tenant is entitled to an order pursuant to section 62 of the *Act* and I make the following orders pursuant to this section:

- 1. The Landlord is ordered to vacate the rental unit, being the house located at the address on the front page of this decision, immediately upon receipt of this decision.**
- 2. The Landlord is ordered to comply with section 29 of the *Act* for the remainder of the tenancy agreement. Section 29 of the *Act* is outlined above for reference.**

Is the Tenant entitled to compensation for monetary loss or other money owed?

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

As stated, I accept that the Landlord has breached the tenancy agreement as well as sections 28 and 29 of the *Act* by moving into the rental unit during the tenancy.

I accept the undisputed testimony of J.Z. that the Tenant has suffered loss due to the Landlord's breach. I accept the undisputed testimony of J.Z. that the Landlord has caused conflict, tension and police incidents at the rental unit. I accept the undisputed testimony of J.Z. that the Landlord or their friends have been responsible for verbal assaults, threats, racism towards S.E. and loss of internet. I accept the undisputed testimony of J.Z. that the Landlord has caused the Tenant stress by moving into the rental unit. I find the Tenant has suffered a loss of quiet enjoyment in relation to the rental unit.

I find the Tenant is entitled to three-quarters of the amount of daily rent from December 11, 2021, the date the Application was filed, to January 12, 2022, the date of this decision. I calculate this to be \$1,898.63 ($\$1,750.00 \times 12 \text{ months} = \$21,000 / 365 \text{ days} = \$57.53 \times 33 \text{ days} = \$1,898.63$). I find this amount reasonable because the Landlord has interfered with the Tenant's exclusive possession of the rental unit which, as stated, is at the core of the tenancy agreement. As stated, I find the Landlord's breach egregious and I accept that it has caused significant interference with the Tenant's right to exclusive possession and quiet enjoyment of the rental unit. I do not find it appropriate to award the Tenant the entire daily rent for the period outlined because the Tenant is still living in the rental unit and has been able to use the services and facilities in the upstairs suite.

I am satisfied the Tenant mitigated their loss in relation to the Landlord's breach by filing the Application to enforce their rights under the tenancy agreement. Further, I accept the undisputed testimony of J.Z. that the Tenant has tried to keep the peace between them and the Landlord as much as possible.

Given the above, I am satisfied the Tenant is entitled to \$1,898.63 pursuant to section 67 of the *Act*.

Is the Tenant entitled to recover the filing fee?

Given the Tenant was successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$1,998.63 and I issue the Tenant a Monetary Order in this amount.

Conclusion

I make the following orders:

- 1. The Landlord is ordered to vacate the rental unit, being the house located at the address on the front page of this decision, immediately upon receipt of this decision.**
- 2. The Landlord is ordered to comply with section 29 of the *Act* for the remainder of the tenancy agreement. Section 29 of the *Act* is outlined above for reference.**

The Tenant is issued a Monetary Order for \$1,998.63. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it 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 *Act*.

Dated: January 12, 2022

Residential Tenancy Branch