



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, RR, CNE, DRI, OLC, LRE**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- A monetary order for damages or compensation pursuant section 67;
- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order to cancel a notice to end tenancy for end of employment pursuant to sections 47 and 55;
- An order to dispute a rent increase above the amount allowable under the *Act* pursuant to section 41;
- An order for the landlord to comply with the *Act*, regulations or tenancy agreement pursuant to section 62; and
- An order suspending the landlord's right to enter the rental unit pursuant to section 70.

Both tenants attended the hearing, and the landlord was represented at the hearing by its manager, BW. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings and stated she had no concerns with timely service of documents. The landlord did not receive a 13-page handwritten submission drafted by the tenant which the tenant admits to not serving upon the landlord due to a lack of access to the internet. As this document was not exchanged with the respondent in accordance with Rule 3 of the Rules of Procedure, I advised the tenant that she had the full opportunity to describe its contents but that I would not refer to it in this decision. The tenant indicated she understood.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules"). The parties were informed that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*. Both parties confirmed that they were not recording the hearing.

Settlement Reached

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. At the commencement of the hearing the parties discussed the issue of ending the tenancy and agreed to the following settlement of this issue:

1. The parties mutually agree to end the tenancy. This tenancy will end at 1:00 p.m. on February 16, 2022, by which time the tenant and any other occupant will have vacated the rental unit.
2. The landlord's notice to end tenancy for end of employment is cancelled and of no further force or effect.
3. The rights and obligations of the parties continue until the tenancy ends. This includes the obligation of the landlord to provide services and facilities that are essential to the tenants' use of the rental unit as a living accommodation, as outlined in section 27 of the *Act*.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settles these aspects of the dispute. As the parties resolved matters by agreement, I make no findings of fact or law with respect to these aspects of the application before me.

As the tenancy is scheduled to end in six days, the following aspects of the tenant's application for dispute resolution are dismissed without leave to reapply:

- An order to cancel a notice to end tenancy for end of employment pursuant to sections 47 and 55;
- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order for the landlord to comply with the *Act*, regulations or tenancy agreement pursuant to section 62; and

- An order suspending the landlord's right to enter the rental unit pursuant to section 70.

Issue(s) to be Decided

Is the tenant entitled to:

- An order to dispute a rent increase above the amount allowable under the *Act* pursuant to section 41?
- A monetary order for damages or compensation pursuant section 67;

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree that they both attended a previous hearing regarding the landlord's application for an early end to the tenancy on November 22, 2021. The landlord's application was dismissed and the file number for the previous hearing is recorded on the cover page of this decision.

The tenant (TG) gave the following testimony. The rental unit is a room in a hotel. She was hired as an employee of the hotel but is no longer employed by the hotel. The tenant argues that when she moved in, there was a different agreement as to the amount of rent to be paid. The tenant alleges the landlord switched the amount of rent she was supposed to pay and started taking more rent off her cheques for lodging. She has overpaid her rent by \$600.00. The tenant testified she has a complaint filed with the labour board but didn't specify the nature of that claim. The tenant argues that she was supposed to be getting the "employee rate" for lodging but discovered that other long-term tenants at the hotel pay the same rent as her.

The landlord testified that she has a copy the tenancy agreement with the tenant setting the rent at \$750.00 per month. A copy was not provided for this hearing as the owner of the hotel just gave it to her last night. The landlord believed a copy was uploaded for a previous hearing, however that evidence is not available to me for this hearing.

The tenant seeks compensation in the amount of \$4,650.00 for harassment and stress causing her health to take a drastic dive and causing her mental state to deteriorate. The tenant describes the landlord's actions include towing her car, not paying her wages and cutting their power. The landlord's failure to give the tenant her records of employment ("ROE"), prevented her from claiming employment insurance. The tenant testified that she is currently taking her landlord/employer to employment standards on a complaint filed there.

The landlord testified that the reason the tenant's vehicle was towed was because it was parked on private property without insurance. There were no license plates on the car and the car had to be towed off the property. The tenants refuse to follow covid protocols including wearing masks and they smoke in their room which is prohibited. Lastly, the landlord testified that the tenant has not paid rent since the beginning of October and that the landlord has served the tenant with at least three notices to end tenancy for unpaid rent.

Analysis

Section 7 of the *Act* states: 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. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points: (the "4 point test").

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Regarding the tenant's application disputing the rent increase. As noted above, the onus is on the applicant to provide sufficient evidence to satisfy me that the landlord increased her rent illegally. The tenant did not provide a copy of a tenancy agreement

to indicate what rate of rent was agreed to by the parties, although she did provide the “monthly and weekly extended stay agreement” signed by herself and a representative of the hotel. I note that the rate of monthly rent was not recorded on that document. Consequently, I cannot make a factual determination about what rent was set at or whether the landlord increased it contrary to the provisions of the *Act*. Based on the lack of evidence to prove this portion of her claim, I dismiss this portion of the application without leave to reapply.

Regarding the tenant’s application seeking compensation for harassment, distress and diminished mental health, I turn to section 28 of the *Act* which 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

Essentially, the tenant seeks compensation for the landlord’s breach of her right to quiet enjoyment of the rental unit. In determining whether the tenant’s right to quiet enjoyment has been breached, I must determine whether the tenant’s ordinary and lawful enjoyment of the rental unit has been substantially interfered with as a result of the landlord’s actions or inaction. It is important to note that in order to make a finding of significant interference or unreasonable disturbance, the interference or disturbance in question has to either be recurring in nature or otherwise very egregious.

Here, I accept the landlord’s reasoning for towing the tenant’s car due to not being insured and stored on the hotel property. I find it reasonable for the landlord to do so, as having storage insurance is a legal requirement and not having storage insurance poses a risk to the property owner and the other vehicles in the parking lot. I also accept the landlord’s testimony that the perceived “harassment” was serving the tenant with the notices to end tenancy which the landlord is within their right to serve upon the tenant. The other issue of the landlord failing to provide the tenant with records of employment for claiming employment insurance is an issue that is closely related to the relationship of the parties as employer/employee, not landlord/tenant. As such, I find

that I cannot rely upon that as forming the grounds for not providing the tenant with quiet enjoyment of the rental unit.

Lastly, the tenant has not provided any corroborative evidence such as doctor's opinions, receipts for prescriptions, counselling notes or any other documentary proof that her mental state has deteriorated due to any breach of the *Act* by the landlord. Likewise, the tenant did not quantify how she arrived at the figure of \$4,650.00 as the amount for her claim for harassment and stress.

I find that the tenant has provided insufficient evidence to satisfy me the existence of the damage or loss (point 1 of the 4 point test), or the value of the damage or loss (point 3 of the 4 point test). Consequently, I dismiss this portion of the tenant's application without leave to reapply.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue an Order of Possession to the landlord. The landlord is to serve this Order of Possession upon the tenant immediately and enforce it as early as 1:00 p.m. on February 16, 2022 should the landlord be required to do so.

The landlord's notice to end tenancy for end of employment is cancelled and of no further force or effect.

The rights and obligations of the parties continue until the tenancy ends. This includes the obligation of the landlord to provide services and facilities that are essential to the tenants' use of the rental unit as a living accommodation, as outlined in section 27 of the *Act*.

The remainder of the tenant's application for dispute resolution is dismissed without leave to reapply.

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 10, 2022