



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

PSF, LRE, OLC, MNDCT

Introduction

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

- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

The landlords did not attend this hearing which lasted approximately 20 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The tenant testified that they served the landlords with the notice of hearing and evidence by registered mail sent on November 15, 2021 and subsequently by hand. The tenant provided valid Canada Post tracking numbers as evidence of service. Based on the evidence I find that the landlords are deemed served with the tenant's

materials on November 20, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

At the outset of the hearing the tenant testified that this tenancy has ended and they have vacated the rental unit. The tenant withdrew the portions of their application pertaining to an ongoing tenancy.

Issue(s) to be Decided

Should the landlords be ordered to comply with the Act, regulations or tenancy agreement? Is the tenant entitled to a monetary award as claimed?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in April, 2021. The monthly rent was \$600.00 payable on the first of each month. A security deposit of \$300.00 was paid at the start of the tenancy and is still held by the landlords. No written tenancy agreement was prepared and no condition inspection report was prepared at any time for this tenancy.

The tenant submits that a material term of the tenancy agreement was that wifi internet access was included in the monthly rent. The tenant submits copies of text message conversations with the landlord where the issue of wifi access is addressed and the landlord states:

You can use ours, it is range so you will just have to get the password which I will have to get and test it...if it's too slow you just let us know and we will up it no problem.

The tenant submits that the landlord cut off wifi access on November 1, 2021. The tenant requested in writing that the wifi be reinstated on that date but the landlord refused to comply. The tenant submitted into evidence copies of the correspondence where the landlord refuses to provide the wifi services and denies that there is a tenancy between the parties.

As the landlords failed to correct the situation within a reasonable time or at all, the tenant gave written notice to end the tenancy and vacated the rental unit by November 30, 2021. The tenant provided the landlord with a forwarding address in writing on November 24, 2021. The tenant submitted the correspondence wherein the landlords acknowledge receipt of the forwarding address.

The tenant submits that they have not authorized the landlords to make any deduction from the security deposit for this tenancy and seek its full return.

The tenant seeks a monetary award of \$2,000.00 saying that they have suffered a loss in the value of the tenancy due to the wifi being cut off. The tenant explained that the rental unit is in a remote community which does not have cellular reception so internet wifi access is essential to communicate with the outside world. The tenant described how they would need to commute to a coffee shop to use their internet on a daily basis.

The tenant also submits that they incurred harassment from the landlords, felt vulnerable and threatened by their conduct and suffered negative effects including loss of sleep, anxiety and an overall loss of quiet enjoyment of the rental unit.

Analysis

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

This section, read in conjunction with section 65, allows me to issue a monetary award for the loss in the value of a tenancy when there is a reduction in the value of a tenancy agreement.

I find that there is a valid tenancy agreement between the parties wherein the tenant is obligated to pay monthly rent in the amount of \$600.00 and that rent includes use of internet wifi.

While no written tenancy agreement was prepared, the written correspondence between the parties clearly show that there was an agreement for the tenant to have exclusive possession of the rental unit, the amount of rent payable, and the services included. I find the landlord requesting and holding a security deposit in an amount equivalent to one half month's rent to be clear indication that this was a valid tenancy rather than temporary accommodation.

I find that wifi service was included in the monthly rent. I find the landlord's communication on this point to be unambiguous and cannot be reasonably interpreted in alternate ways. I accept the undisputed evidence that the landlord unilaterally suspended internet wifi services as of November 1, 2021 in breach of the oral tenancy agreement and section 27 of the *Act*.

I accept that the suspension of the internet wifi had significant detrimental effects on the value of this tenancy. The tenant gave cogent explanation that the rental unit is located in a remote area where the loss of working internet results in loss of contact with the outside world. The tenant was unable to contact friends, conduct business, order food, peruse online articles or news or view online content. As a result of the isolation the tenant needed to travel daily to areas where there was working internet.

I accept that there was a loss in the value of the tenancy for the month of November 2021. I find the tenant's suggestion of \$200.00, 1/3 of the monthly rent, representing the loss to be appropriate. With the loss of internet wifi services the rental unit became little more than a place to sleep and eat. The tenant was unable to utilize the rental unit for normal daily activities, communicate with others or do simple tasks without travelling outside of the rental unit. I issue a monetary award in that amount in the tenant's favour.

I find insufficient evidence for the balance of the tenant's claim. The tenant claims \$1,800.00 for loss of quiet enjoyment and submits that they have endured harassment, intimidation and attacks by the landlords.

Section 28 of the *Act* speaks to a tenant's right to quiet enjoyment, and provides as follows:

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.

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means a substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

Based on the evidence submitted I find that there were some disparaging comments made by the landlords in the correspondence and the tone of the communications were far from civil or reasonable. However, I find that this was an aberration at the end of the tenancy and the relationship between the parties were cordial until the internet services were cut off in November 2021. I do not find sufficient evidence that the conduct of the landlords was so frequent or ongoing that it could reasonably be construed as a breach of the right to quiet enjoyment.

I find the tenant's testimony about threatening looks given by the landlord to not be supported in the documentary evidence and in any event, unpleasant glares are not sufficient to find a breach. Consequently, I dismiss this portion of the tenant's application.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in

writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

In the present case I accept the undisputed evidence of the tenant by their testimony and documentary materials, that they provided a forwarding address in writing to the landlords on November 24, 2021. I accept that the tenant has not given authorization that the landlords may retain any portion of the deposit.

Additionally, I accept the evidence that no condition inspection report was prepared at any time for this tenancy. Section 24(2) provides that a landlord's right to claim against a security deposit is extinguished if they do not prepare an inspection report in accordance with the regulations.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days of receipt of the tenant's forwarding address. In any event, I find the landlords have extinguished their right to the deposit by failing to prepare an inspection report in accordance with the regulations. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlords' failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$600.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$800.00. The landlords must be served with this Order as soon as possible. Should the landlords 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: March 7, 2022

Residential Tenancy Branch