



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, CNC, MNDCT, OLC, LRE, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing, by teleconference, was held on May 20, 2022. The Tenant applied for multiple remedies under the *Residential Tenancy Act* (the "Act").

Both sides attended the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

Preliminary Matters – Service

The Tenant stated that he sent the Landlord his Notice of Dispute Resolution Proceeding and evidence (USB drive with audio/video files along with some printed documents) by registered mail on February 18, 2022. The Tenant provided a tracking number for this mailing. Although the Landlords deny getting this package, I find the Landlords are deemed served with this package on February 23, 2022, 5 days after it was mailed, pursuant to section 90 of the Act.

Despite this, I find the Tenant has failed to sufficiently serve, in accordance with the Rules of Procedure, his digital USB evidence, as laid out below:

First, I turn to the following Rules of Procedure:

3.10.1 Description and labelling of digital evidence

To ensure a fair, efficient and effective process, where a party submits digital evidence, identical digital evidence and an accompanying description must be submitted through the Online Application for Dispute Resolution or Dispute Access Site, directly to the

Residential Tenancy Branch or through a Service BC Office, and be served on each respondent. A party submitting digital evidence must:

- *include with the digital evidence:*
 - *a description of the evidence;*
 - *identification of photographs, such as a logical number system and description;*
 - *a description of the contents of each digital file;*
 - *a time code for the key point in each audio or video recording; and*
 - *a statement as to the significance of each digital file;*

3.10.3 Digital evidence submitted directly to the Residential Tenancy Branch or through Service BC

Parties who submit digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must provide the information required under Rule 3.10.1 using Digital Evidence Details (form RTB-43).

3.10.4 Digital evidence served to other parties

Parties who serve digital evidence on other parties must provide the information required under Rule 3.10.1 using Digital Evidence Details (form RTB-43). Parties who serve digital evidence to the Residential Tenancy Branch and paper evidence to other parties must provide the same documents and photographs, identified in the same manner in accordance with Rule 3.7.

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible. To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: “Living room photo 1 and Living room photo 2”.

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

There is no evidence that the Tenant used an RTB-43 form, which is intended to help make evidence identifiable and organized. It is difficult to ascertain which portions of each video files are relevant, without the RTB-43 form. Given this, I find the audio and video files provided by the Tenant are not admissible (all files on the USB drive). I will only consider the photos and documents (printed materials that were served to the Landlord), as determining the relevance of those files is not nearly as cumbersome or time consuming.

I also note the Tenant dropped his Notice of Dispute Resolution Proceeding and printed evidence to the Landlord's mailbox a few days later, which the Landlords acknowledge getting. This package did not contain the USB drive.

The Landlords stated that they did not serve, or attempt to serve, the Tenant with their evidence package in one of the allowable methods under section 88 or 89 of the Act. I find the Landlord should have at least attempted to mail or send their evidence to the address for service the Tenant had listed on the Notice of Dispute Resolution Proceeding, regardless of whether or not they believed the Tenant would receive the documents, because the Tenant had not provided a more up to date address for service. Had the Landlord provided proof they had attempted to serve the Tenant at the address he provided as his address for service (and in the absence of the more up to date address), their evidence may have been admissible (and deemed served). However, this was not done, and the Landlord has failed to sufficiently serve the Tenant with their evidence. I find the Landlord's evidence is not admissible.

Preliminary Matters – scope of application

At the hearing, the Tenant confirmed that he moved out shortly after filing his application, and that the only ground he is still seeking is for monetary compensation. As such, I hereby amend the Tenant's application accordingly. This issue will be further addressed below. The Landlord did not oppose this.

Issue(s) to be Decided

1. Is the Tenant entitled to compensation for damage or loss under the Act?

Background and Evidence

The Tenant stated on his application that monthly rent is set at \$600.00 per month, and that it is due on the first of the month. The Tenant stated that he rents 1 room in a self-contained 4 bedroom basement suite which is in the Landlords' basement. The Tenant stated that the Landlords live upstairs. The Tenant rents one of 4 bedrooms located on the lower floor of the home, and he shares a kitchen and some common areas with at least 3 other Tenants who have separate agreements with the Landlords.

The Tenant stated that around February 7, 2022, one of the Landlords started "power tripping" and verbally asked him to leave within 3 days, due to some disagreements over smoking in and around the house. The Landlords stated that this was the same day they issued a warning letter to the Tenant because he was smoking inside and outside the rental unit, contrary to his tenancy agreement. The Landlords stated that this put their property at risk. The Landlords stated that they did not issue the formal 1-Month Notice to End Tenancy for Cause until February 27, 2022, for breach of a material term (smoking).

The Tenant stated that the Landlords installed 3 cameras inside the rental unit which impacted his enjoyment of the space. The Tenant explained that the Landlord installed one camera in the common hallway within the suite, facing the bathroom door. The Tenant stated that the Landlord installed a second camera in the kitchen of the rental suite, and another one inside a storage closet (the Landlord's storage).

The Tenant stated on his application that he has been suffering mentally, since the Landlord asked him to leave, and he has suffered the following conditions: loss of appetite, unable to sleep peacefully, no healthy bowel movements, bloody stools because of stress, and being confined to his room because of not wanting to be exposed to the Landlord's surveillance cameras which were installed a couple weeks prior. The Tenant did not specifically speak to the above noted issues with his health during the hearing but he did speak to the fact that the cameras made him uncomfortable.

The Tenant stated that after receiving the 1 Month Notice on February 27, 2022, he moved out on February 28, 2022, and left the keys on the counter. The Tenant stated that he cleared most of his things out that day, with the exception of a couple kitchen utensils and a few food items in the fridge.

The Landlords suggested that they installed the cameras in the rental unit to protect all the other Tenants who also live in that suite, and share the same spaces. The

Landlords stated that they put a camera facing the bathroom door because they had an incident where one of the Tenants had purposefully vandalized the bathroom by leaving the water running, so they wanted to protect against some of that. The Landlords stated that the camera is installed in the cabinet downstairs because it is their cabinet, for personal storage. They stated the only way to see this camera is if one of the Tenants tried to access the Landlords' storage. The Landlords stated that they are trying to keep the property safe, and are not trying to harass people. The Landlords stated that they only had an issue with the Tenant because he kept smoking on the property, despite warnings not to, and despite the tenancy agreement. The Landlords denied that they ever entered the Tenant's room, without his knowledge, and they only enter the common areas of the downstairs suite when they have to do repairs (such as the repair to the dryer on February 10, 2022).

The Tenant is seeking the following items, as per his monetary order worksheets:

- 1) \$4,000.00 – Emotional damages/Aggravated Damages
- 2) \$620.00 – Clothing
- 3) \$40.21 – Printing/Mailing/Admin costs

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I will address each of the Tenant's monetary items in the same order as above:

- 1) \$4,000.00 – Emotional damages/Aggravated Damages

I note that, as an arbitrator, I may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's wilful or reckless indifferent 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.

In this case, I find there is insufficient evidence to establish that the Landlord acted in a sufficiently deliberate, negligent and/or high-handed manner such that the Tenant ought to be entitled to aggravated damages.

Although the Tenant listed that he had several medical issues on his application, and listed that he had emotional damage and physical symptoms, he provided little to no testimony to explain and elaborate on the alleged medical issues. The Tenant noted on his application that he experienced: loss of appetite, unable to sleep peacefully, no healthy bowel movements, and bloody stools because of stress. Not only did the Tenant fail to elaborate verbally on his non-pecuniary losses, but there is also insufficient documentary or medical evidence to support any of these issues. Ultimately, the Tenant has not sufficiently demonstrated that he had the above noted medical issues, how long he may have had them, and that any of the alleged issues were likely caused by the Landlord's reckless, indifferent, or negligent actions.

It appears a significant part of the dysfunction came from a disagreement about smoking in and around the rental unit, which led to warning letters, and dysfunctional interactions. I acknowledge that there were several negative interactions between the parties in the final month or so of the tenancy. However, I am not satisfied the Landlords' actions were sufficiently high handed or egregious as to warrant a claim for aggravated damages. That being said, I note the Landlord installed several cameras in the rental unit a matter of weeks before the tenancy ended. At least 2 of these cameras are directly in the core living space that the Tenant (and the other roommates) use. I note the Landlords provided reasons for installing the cameras inside the unit. However, I note there is no evidence this was done with the consent of the Tenant and the others who live in that space. With respect to this Tenant, and this tenancy, I find the

installation of the camera (facing bathroom door and in kitchen) is a breach of section 28(a) of the Act, which states the following:

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;

I find that placing a camera facing the bathroom door, and in the kitchen of the rental unit, without the prior and informed consent of the Tenant is a breach of his right to reasonable privacy. That being said, I note the cameras were only present for a couple of weeks before the tenancy ended, so I find the impacts would likely have been relatively short lived. It is difficult to establish the value of the loss in this case.

I note that an arbitrator may award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case, I find a nominal award is appropriate, for the Landlord’s breach of section 28(a) of the Act, for installing the camera in the kitchen, and the camera facing the bathroom door, in mid-February 2022. I award the Tenant \$200.00 for this item. As stated above, the Tenant’s application for compensation for emotional distress and aggravated damages is dismissed, without leave.

2) \$620.00 – Clothing

I note the Tenant did not speak to this item during the hearing, and only referred to a few kitchen items. I do not find the Tenant sufficiently elaborated on this, what it is comprised of, and why the Landlords ought to be responsible for it. I dismiss this item, in full.

3) \$40.21 – Printing/Mailing/Admin costs

I note the Tenant has incurred costs to prepare for this proceeding. However, these costs are not recoverable under the Act. Only the cost of the filing fee is recoverable (if successful) in terms of application and preparation costs.

As the Tenant was partly successful with his application, I grant him the recovery of the filing fee against the Landlord (\$100.00).

In summary, I award the Tenant \$300.00 for the nominal award and the filing fee.

Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of **\$300.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: May 24, 2022

Residential Tenancy Branch