



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, under section 62; and
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

Preliminary Issue - Service

The tenant served the Notice of Hearing and the evidence (the materials) via email on March 07, 2022. The landlord confirmed receipt of the materials. The landlord emailed the response evidence two days after he received the tenant's materials. The tenant confirmed receipt of the landlord's response evidence.

Based on the testimony offered by both parties, I find the tenant served the materials and the landlord served the response evidence in accordance with section 89(1) of the Act.

The tenant served the amendments dated April and May 13, 2022 via email. The tenant does not remember when he emailed the amendments. Later the tenant affirmed he has the email in front of him. The landlord stated he did not receive the amendments.

The amendment form states: “How to use this form: Read the rules on amendments outlined in Policy Guideline 23: Amending an Application for Dispute Resolution available on the Residential Tenancy Branch website.”

Residential Tenancy Branch (RTB) Policy Guideline 12 states:

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

RTB Policy Guideline 23 states: “A party must be prepared to provide proof of service of the Amendment to an Application for Dispute Resolution and supporting evidence for each respondent.”

The tenant did not submit documentary evidence indicating that he served the amendments. I find the tenant failed to prove that he served the amendments. As such, I am not considering the amendments.

Preliminary Issue – Partial Settlement

At the hearing both parties agreed to the following binding settlement for the claim for an order requiring the landlord to comply with the Act:

- the landlord will conduct a criminal background check for new tenants in the rental unit.

The application for a monetary order under section 67 will be adjudicated.

Issue to be Decided

Is the tenant entitled to a monetary order for loss?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and

important aspects of the tenant's claim and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the ongoing tenancy started in February 2020. Monthly rent is \$600.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$300.00 was collected and the landlord holds it in trust. The tenant rents a bedroom in a 3-bedroom upper floor rental unit and shares the common areas with two other tenants.

The tenant is claiming compensation for loss of quiet enjoyment in the amount of \$10,000.00, as the landlord was aware that tenant KY was threatening and disturbing the tenant and the landlord did not guarantee the tenant's right of quiet enjoyment.

The tenant testified the landlord does not investigate prospective new tenants and allows any applicant to move to the rental unit. The landlord said he contacts previous landlords and conducts credit checks. The landlord does not conduct a criminal background check and does not ask for the medical records of prospective tenants, as he is not allowed to do so.

The landlord affirmed that KY moved to the rental unit in September 2021 and moved out in April 2022. The tenant and KY were next-door neighbours.

The tenant stated that in September 2021 he had an argument with KY about the recyclable items and the tenant informed the landlord about the argument. The landlord testified that after this incident he personally handled the recyclable items of the rental unit in order to avoid arguments between the tenant and KY.

The tenant said KY had bad hygiene habits, as he did not shower and left excrement in the toilet. On November 30, 2021 the tenant texted the landlord about KY's hygiene habits:

Tenant: He rarely showers. Has never done his laundry.

Landlord: I cannot forced him to shower. That is not my business.

Tenant: You are a landlord. You are responsible for the conduct of your tenants so their actions do not affect the lives of other tenants. Because every tenant has the right to live peacefully. [...] That is your role as landlord. AM has lived here 3 years, me almost 2. I have tried to make this a clean and comfortable place to live. It now almost intolerable. He loves to make things ugly. You have done nothing but criticize me since I moved in.

The tenant affirmed that in December 2021 KY clogged the toilet because he flushed wet wipes and the tenant plunged the toilet for 15 minutes. The tenant informed the landlord about this incident and the landlord asked KY to stop flushing wet wipes. The tenant stated that KY threatened him because the tenant contacted the landlord.

The landlord testified he was aware of the December 2021 incident in December 2021 or January 2022. Later the landlord said that he only learned that KY and the tenant had arguments in January 2022.

The landlord offered both the tenant and KY the opportunity to move to the lower floor rental unit (the lower floor unit). The rental for a bedroom in the lower floor unit is \$700.00, as the bedrooms are bigger and there are only 2 bedrooms. Both the tenant and KY did not accept to move to the lower floor unit. The tenant affirmed he did not move to the lower floor unit because it is louder, darker and it costs more.

The tenant stated that in February 2022 he had an argument with KY about loud music at 10:30 A.M. KY threatened the tenant ("I should slap you") and shoved him. The police attended the rental unit and the tenant provided the police file number to the landlord. The police informed the tenant, and the tenant informed the landlord, that KY had 44 police encounters. The tenant also informed the landlord that KY threatened and shoved him.

The landlord confirmed that he was aware of KY's criminal background in February and he asked KY to move out. The landlord did not serve a notice to end tenancy in February 2022 because KY was unemployed and could not find a new rental unit. Later the landlord testified he was not aware of KY's criminal background or that he shoved the tenant in February 2022. The landlord said that he would have evicted KY immediately if he were aware of KY's criminal background.

The landlord affirmed he called the police to ask for more details about the February police incident, but the police could not provide details or a copy of the police report. The tenant did not send a copy of the police report to the landlord because it would cost \$100.00 to obtain this document.

The tenant submitted into evidence the text messages about the February 2022 incident:

Tenant: Trying to work and he keeps playing loud music he doesn't give a fuck about the rules of the house posted on the fridge. I slopped another one under his door and he doesn't give a shit. He plays music and does whatever the fuck he wants. Who cares about anybody in this house.

Landlord: You need to find other place that is away from this guy and make you happy.

Tenant: Go to hell. You're a fucking landlord, you do fucking nothing.

Landlord: Do not text me for his issues.

Tenant: You let anyone who pays you money into this house. You take no responsibility an put it all on the tenants. You are the worst landlord of the planet of the earth.

[...]

Landlord: Violent issues, call 911, vaccine issues, call 811 health line. Landlord has no authority to evict tenants regarding of vaccines. If you feel not safe and comfort here, and do not want to report police and [health authority], the best way you can do is to find other places. I want you happy living here.

Tenant: You absolutely do and f I do that I have to deal with him. I deal with a guy who's been in jail, who is a criminal. Yeah sure leave it on me. [...] You don't fucking nothing.

The landlord stated the tenant texted him with abusive language and called him at midnight. The tenant testified he used abusive language in the text messages because he was very frustrated with the landlord.

Both parties agreed that KY physically assaulted the tenant in April 2022 and damaged the tenant's prescription glasses. The police arrested KY and a restraining order was issued prohibiting KY from contacting the tenant. The landlord served a notice to terminate the tenancy to KY after the April 2022 incident and he moved out.

The tenant said the landlord was aware of the frequent disturbances caused by KY and did not address them. The tenant could not live peacefully and had stress because of the disputes with KY. In February or March 2022 the tenant's nose started bleeding because of stress. The tenant's nose bled several times and the tenant's physician said the bleeding was caused by stress.

The landlord affirmed he could not have terminated KY's tenancy earlier, the tenant discriminated against KY because of his origins, and the landlord addressed the issues between the tenant and KY. The landlord advised the tenant to call the police if there is violence.

The landlord stated that other tenants submitted complaints against the tenant.

The tenant testified the landlord did not inform him about complaints against him.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(1) 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.

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

Residential Tenancy Branch (RTB) 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 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.

Section 28 of the Act states:

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.

(emphasis added)

Residential Tenancy Branch Policy Guideline 6 states:

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 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 entitlement to 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.

[...]

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).

(emphasis added)

Based on the testimony offered by both parties, I find the landlord was aware in September 2021 that the tenant and KY had an argument about the recyclable items.

Based on the November 30, 2021 text messages, I find the landlord was aware on November 30, 2021 that KY was disturbing the tenant. I find that on November 30, 2021 the landlord was aware tenants are entitled to freedom from unreasonable disturbance and the tenant was aware that the landlord was not willing to further address the disputes between the tenant and KY.

Based on the tenant's convincing testimony, I find the landlord was aware that KY threatened the tenant in December 2021.

Based on the tenant's convincing testimony, I find the landlord was aware that KY has a criminal background and shoved the tenant in February 2022. The landlord acknowledged that he did not serve KY a notice to end tenancy in February 2022 because KY was unemployed.

Based on the text messages and the testimony offered by both parties, I find the landlord partially addressed the tenant's complaints by personally handling the recyclable items, offering the tenant and KY to move to the lower unit and advising the tenant to call the police. I find these actions were not enough to sufficiently address the KY's disturbing behaviour.

I find the tenant was not able to live peacefully in the rental unit because of the frequent and ongoing disputes with KY from September 2021 to April 2022. I find the landlord breached section 28(b) of the Act by not sufficiently addressing KY's disturbing behaviour. I further find the tenant suffered a loss of his right of quiet enjoyment because of the landlord's non-compliance with the Act.

In consideration of the quantum of damages, I refer again to Residential Tenancy Branch Policy Guideline 6:

In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which 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.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

(emphasis added)

Residential Tenancy Branch Policy Guideline 05 provides additional information about the duty to minimize the loss:

B. REASONABLE EFFORTS TO MINIMIZE LOSSES

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;
- promptly report the damage and leak to the landlord and request repairs to avoid further damage;
- file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

Partial mitigation

Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.

(emphasis added)

The tenant was aware on November 30, 2021 that the landlord was not willing to sufficiently address KY's disturbing behaviour. After the November 30, 2021 text messages the tenant and KY had another incident in December 2021 and the tenant submitted this application on February 23, 2022. I find the tenant did not explain why he only submitted this application almost three months after the November 30, 2021 text messages. Thus, I find the tenant only partially minimized his losses.

The landlord partially addressed the tenant's complaints and the tenant partially minimized his losses. In view of the circumstances, I find it is reasonable to award the tenant compensation in the amount of \$600.00.

Pursuant to sections 7 and 67 of the Act and considering Residential Tenancy Branch Policy Guideline 6, I award the tenant compensation for loss of quiet enjoyment in the amount of \$600.00.

Section 72(2)(a) of the Act allows the tenant to deduct from future rent an amount owed by the landlord:

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted
(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

I order the tenant to deduct the amount awarded from a future rent payment.

Conclusion

Pursuant to sections 67 and 72 of the Act, I award the tenant compensation in the amount of \$600.00 and authorize the tenant to not pay rent due on July 01, 2022 in full compensation of the award.

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: June 09, 2022

Residential Tenancy Branch