



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNDCT, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order pursuant to s. 51 for compensation equivalent to 12 months’ rent;
- An order pursuant to s. 67 for monetary compensation; and
- Return of her filing fee pursuant to s. 72.

T.Y. appeared as the Tenant. C.C. appeared as agent for the Landlord. S.Z. appeared as the assistant to the Landlord’s agent.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised that she served the Notice of Dispute Resolution and her evidence on the Landlord by way of registered mail. The Landlord’s agent acknowledges receipt of the Tenant’s application materials without objection. I find that the Tenant’s application materials were served in accordance with s. 89 of the *Act*.

The Landlord’s agent confirmed no evidence was served by the Landlord in response to the application.

Issues to be Decided

- 1) Is the Tenant entitled to compensation equivalent to 12 months’ rent?
- 2) Is the Tenant entitled to monetary compensation for loss or other money owed?
- 3) Is the Tenant entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I put the parties on notice of Rule 7.4 of the Rules of Procedure, which requires a party to present the evidence they submitted. I have reviewed all written and oral evidence presented to me at the hearing. However, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on November 12, 2017.
- The Landlord obtained vacant possession of the rental unit on October 20, 2021.
- Rent of \$500.00 was due on the first day of each month.
- The Tenant paid a security deposit of \$250.00 to the Landlord.

A copy of the tenancy agreement was put into evidence by the Tenant. I was advised by the Landlord's agent that the Landlord formerly resided on the upper portion of the subject property and that the Tenant rented a room within a separate basement suite.

The Landlord's agent acknowledges that the Landlord had served a two-month notice to end tenancy on the Tenant as the Landlord was in the process of selling the property in the fall of 2021. The Tenant provides a copy of the Two-Month Notice to End Tenancy signed on August 7, 2021 (the "Two-Month Notice"), which lists that the conditions of the sale had been satisfied and the buyer asked for vacant possession.

The Landlord's agent admits that when the Two-Month Notice was served on the Tenant, the sale conditions had not been satisfied. The Landlord's agent further testified that the property was not sold until the spring of 2022. The Landlord's agent admitted at the hearing that the Landlord was liable and that the Tenant was entitled to rent equivalent to 12 months' rent.

The Tenant also seeks an additional \$9,701.63, which relate to claims of breach of her quiet enjoyment (\$9,000.00), the cost of purchasing a security camera (\$449.22), moving expense (\$126.71), title search for the property (\$25.70), and her filing fee (\$100.00). The Tenant provides a monetary order worksheet. The Landlord's agent admits the title search and her filing fee are appropriate under the circumstances but disputes the other aspects of the Tenant's monetary claim.

The Tenant further alleged that the Landlord entered the rental unit without giving proper notice. The Tenant provided written submissions detailing various instances in which she says the Landlord has disturbed her quiet enjoyment, most of them centering between August 2021 and October 2021. The Tenant argued that the Landlord yelled at her and attempted to force her to move out sooner. The Tenant described instances in which the Landlord played loud music above the rental unit and jumped on the floor above her room. The Tenant provides copies of two videos which are said to show the Landlord entering the rental unit without authorization. The written submissions also detail a dispute with respect to a rent increase the Landlord had attempted to impose in May 2020.

The Tenant argued that the Landlord permitted one of the roommates in the basement rental unit to have her boyfriend live within the rental unit, which was said to be a breach of the tenancy agreement. The Tenant testified that the rooms within the basement were to be rented to only women.

The Landlord's agent drew the distinction between the room the Tenant rented and the common areas of the basement unit and acknowledged the Landlord entered the common areas but did not enter the Tenant's room. The Landlord's agent further alleges that the Tenant did not keep the rental unit in a clean state, which was denied by the Tenant.

Analysis

The Tenant seeks compensation under s. 51 after the Landlord issued the Two-Month Notice and compensation for other losses.

Pursuant to s. 51(2) of the *Act*, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

It is admitted by the Landlord's agent that the Two-Month Notice was issued prior to the subject conditions for the sale of the property had cleared such that the sale did not proceed and the property was not sold until the spring of 2022. The Landlord admits

liability to the Tenant's claim under s. 51(2) in that there was no seller that took possession as per the Two-Month Notice. Based on the Landlord's admissions, I find that the Tenant is entitled to monetary compensation under s. 51(2) of the *Act* in the amount of \$6,000.00 (\$500.00 x 12).

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Section 28 of the *Act* sets out a tenant's right to the quiet enjoyment of their rental. These include the right to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit as set out under s. 29, and the right to use common areas for reasonable and lawful purposes, free from significant interference.

As a general comment, I found that the Tenant's submissions at the hearing to be vague and conclusionary. The Tenant alleged the Landlord had harassed her, though required prompting by me to provide submissions on the alleged conduct. I specifically drew the Tenant's attention to Rule 7.4 such that she presented her evidence in support of her claim.

Despite this, I am satisfied that the Landlord did breach the Tenants right to the quiet enjoyment of her rental. I make this finding based on the acknowledgement by the Landlord's agent that the Landlord entered the common areas of the rental unit and the tacit acknowledgment that this was not done with proper notice as he made distinction between the common areas of the basement suite and the room which the Tenant rented. To say that the Tenant's right to quiet enjoyment is limited to the room which she rented is unsupportable and narrows the scope of the Tenant's right to the point

where it would be meaningless. If I were to accede to the Landlord's argument, it would mean the Tenant does not have a right to quiet enjoyment to the bathroom or the kitchen, which is, on its face, unacceptable.

The Landlord's breach of the Tenant's right to quiet enjoyment is supported by the videos provided by the Tenant, one of which shows an individual entering the rental unit and taking photographs of the kitchen. The fact that the Tenant purchased a camera in the first place is indicative of the Landlord's disregard to the Tenant's right to the quiet enjoyment of her rental. The Landlord provided no evidence to support that entry was conducted in accordance with s. 29 of the *Act*.

Policy Guideline #6 provides guidance with respect to a tenant's right to quiet enjoyment and states the following:

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). 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.

The Tenant seeks \$9,000.00 for the breaches to her quiet enjoyment. I find that the amount claimed by the Tenant is disproportionate to the breach. The Tenant's written submissions focus on instances between August and October 2021, which is during the period in which the Landlord was selling the property. Just because the Landlord was selling the property does not excuse the breaches, but it does limit the temporal scope of the breaches relative to the tenancy, which began in 2017. Indeed, the allegation from the Landlord's agent that the Tenant was not clean may explain why the parties began to argue near to the end of the tenancy as the Landlord was seeking to sell the property.

I find that the repeated nature of the breaches between August and October 2021 detailed in the Tenants written submissions warrant limiting the claim for compensation to those months. Given that rent was \$500.00, I find that the loss of use of the common areas would be equivalent to \$200.00 for each of the months involved, resulting in total compensation in the amount of \$600.00 ($\200.00×3).

The allegations regarding the rent dispute or the boyfriend moving in are not relevant. I accept the Tenant and Landlord disputed a rent increase in May 2020. Based on the submissions, the issue did not proceed any further. It is possible the Landlord did not know that there was a rent freeze in effect due to the pandemic. A simple dispute as described is not a breach of the *Act*. Finally, I find that the dispute regarding the boyfriend is one between the Tenant and her co-tenant roommate, which is a matter I do not have jurisdiction as per Policy Guideline #27.

Dealing with the other expenses, related to moving costs, the title search, and the camera costs. I grant the cost of the title search strictly based on the admission by the Landlord's agent that that is appropriate, being in the total amount of \$25.70.

I accept that the Tenant vacated the rental unit after the Landlord improperly issued a notice to end tenancy under s. 49 of the *Act*. However, the Tenant moved out and has been compensated for the Landlord's breach of s. 49 by application of s. 51(2). To permit an additional claim under s. 67 would result in double compensation for the same breach, which is not permissible.

Finally, the cost of the camera was voluntary. The Tenant was under no obligation to purchase the camera, even if it may have been prompted by the Landlord's breach of her quiet enjoyment. I find that the cost of the camera was self-imposed and is not the Landlord's responsibility.

Adding the amounts above, the Tenant has established a monetary claim under s. 67 totalling \$625.70 ($\$600.00 + \25.70)

Conclusion

The Landlord admits that the Tenant is entitled to compensation under s. 51(2) of the *Act*. I order that the Landlord pay the Tenant \$6,000.00 ($\500.00×12) in compensation pursuant to s. 51(2).

The Tenant has established a compensation claim under s. 67 in the amount of \$625.70. The balance of the Tenant's monetary claim is not allowed.

The Tenant was largely successful in her application. I find that she is entitled to the return of her filing fee. I order pursuant to s. 72(1) that the Landlord pay the Tenant's \$100.00 filing fee.

I make a total monetary award taking the following into account:

Item	Amount
Compensation under s. 51(2)	\$6,000.00
Monetary Compensation under s. 67	\$625.70
Tenant's filing fee to be paid by the Landlord as per s. 72(1)	\$100.00
TOTAL	\$6,725.70

Pursuant to ss. 51, 67, and 72 of the *Act*, I order that the Landlord pay **\$6,725.70** to the Tenant.

It is the Tenant's obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed by the Tenant with 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: July 26, 2022

Residential Tenancy Branch