



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, RR, RP, MNDCT, FFT

Introduction

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

- an order pursuant to s. 47 to cancel a One-Month Notice to End Tenancy;
- an order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement;
- an order pursuant to s. 65 for a rent reduction;
- an order pursuant to s. 32 for repairs to the rental unit;
- an order pursuant to s. 67 for monetary compensation; and
- return of his filing fee pursuant to s. 72.

M.D. appeared as the Tenant. M.W. and K.S. appeared as agents for the Landlord.

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 having served the Landlord with the Notice of Dispute Resolution, which the Landlord’s agents acknowledge having received. Pursuant to s. 71(2) of the *Act*, I find that the Landlord was sufficiently served with the Tenant’s application.

Preliminary Issue – Service Parties’ Evidence

The parties advised that they had appeared before the Residential Tenancy Branch with respect to a previous application filed by the Landlord. I was provided with the file number for the previous matter, which indicates it had come on for hearing on June 28,

2022. The previous matter ended in settlement in which the Tenant agreed to vacate the rental unit by June 30, 2022.

I enquired if the parties had served evidence at the outset of the hearing. The Tenant advised that he wished to rely upon the evidence he had served on the Landlord's application that was heard on June 28, 2022. The Tenant indicates he did not re-serve it as part of his application.

The Landlord's agent advised that the evidence the Landlord provided in response to the Tenant's application had been served in support of its application on June 28, 2022, barring a receipt for a stove. The Landlord's agent confirmed the Landlord did not re-serve its evidence and did not serve the receipt for the stove.

Both sides acknowledge receiving the other sides evidence as part of the Landlord's application on June 28, 2022.

Rules 3.1, 3.14, and 3.15 of the Rules of Procedure require applicants and respondents to provide copies of the evidence upon which they intend to rely to the Residential Tenancy Branch and serve the evidence on the other side.

Parties should treat the processes for different applications separately, including the service of evidence despite the fact that it may replicate itself. I had no knowledge of the other file prior to the hearing nor was I able to review the evidence in preparation for the hearing. However, in this instance both sides indicate that the evidence upon which they intend to rely was served in the other file.

Given both sides are relying on evidence they have provided as part of the previous application, I find that it would be appropriate to accept that evidence as being part of the Tenant's application. Based on the mutual acknowledgments of receipt of evidence, I find that pursuant to s. 71(2) of the *Act* the evidence for both parties was sufficiently served on the other side. I note this does not include the Landlord's stove receipt, which the Landlord's agents advise had not been served. As the receipt was not served, it is not included and shall not be considered by me.

Preliminary Issue – Tenant's Claim

The parties confirmed the Tenant moved out of the rental unit on June 28, 2022. Given that the Landlord has taken back possession of the rental unit, I find that the issues

related to the enforceability of the One-Month Notice are now moot. Similarly, the Tenant's claims for repairs and that the Landlord comply with the *Act*, Regulation, or the tenancy agreement are no longer relevant as the tenancy is over.

As the tenancy is over, I dismiss the Tenant's claims under ss. 47, 32, and 62 without leave to reapply.

The hearing proceeded strictly on the basis of the Tenant's claims under ss. 65, 67, and 72.

Issues to be Decided

- 1) Is the Tenant entitled to a rent reduction?
- 2) Is the Tenant entitled to monetary compensation?
- 3) Is the Tenant entitled to the return of his filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, 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 began to occupy the rental unit on October 15, 2020.
- The Landlord obtained vacant possession of the rental unit on June 28, 2022.
- Rent of \$546.00 was payable on the first day of each month.
- A security deposit of \$273.00 was paid by the Tenant.

A copy of the tenancy agreement was put into evidence by the Landlord. The Landlord's agent advised that the Landlord is a volunteer organization that provides housing for low-income seniors.

The Tenant alleges that the Landlord has failed to take actions to protect his right to quiet enjoyment. The Tenant alleges that J.F., another occupant at the building, assaulted him in June 2021 and that the same J.F. threatened that she would get him evicted. It appears that the police were contacted following the incident but that no actions were taken. The Tenant testified that he notified the Landlord following the incident and that the Landlord did nothing in response to the alleged assault.

The Tenant further testified to a series of confrontations he had with another occupant, P.C., including incidents in which P.C. banged on the walls, stomped his feet, and attempted to break into the Tenant's rental unit by punching a glass door. Again, the Tenant argues that the Landlord did not take steps to address what he was P.C.'s harassment.

The Landlord's agent K.S. testified that she did take steps to investigate the Tenant's complaints but found none were present. The Landlord's agent M.W. indicates that she spoke with J.F. and that she says her finger touched the Tenant's head during the incident in June 2021. It was M.W.'s understanding that issue had resolved.

The Landlord's agents allege that there have been a series of complaints from other occupants at the building in which it is claimed that the Tenant acts in an aggressive and confrontational manner. It was claimed that the other occupants and some of the board members for the Landlord were fearful of the Tenant. Both K.S. and M.W. testified to instances in which the Tenant was confrontational with them. M.W. testified that the Tenant yelled at her on one occasion. The Landlord's evidence includes various statements from the other occupants at the residential property.

The Tenant denies the allegations raised by the other occupants and indicates that they are all lies. He further testified that he was baffled, alarmed, and terrified of the allegations fabricated against him by the Landlord. The Tenant submitted that he is seeking damages for over a year of harassment from the other occupants and the violations to his quiet enjoyment. At the hearing, the Tenant asked for \$35,000.00 in compensation.

Analysis

The Tenant seeks monetary compensation under ss. 65 and 67.

Pursuant to s. 65 of the *Act*, where a landlord is found to have not complied with the *Act*, Regulations, or the tenancy agreement, the director may grant an order that past or future rent be reduced by an amount equivalent to the reduction in the value of the tenancy agreement. Generally, rent reduction claims are advanced when services have been terminated or suspended for repairs.

The Tenant's Notice of Dispute Resolution claims an amount of \$12,000.00 for a rent reduction. At the hearing, however, the Tenant provided no substantive submissions regarding the loss of a service, facility, or other repair issue that would amount to a breach of the Landlord's obligations under the *Act* to provide a service or repair the rental unit. It is the Tenant's claim. He bears the burden of proving it. In this instance, as he failed to provide any meaningful submissions on his rent reduction claim, I find that the Tenant has failed to make out his claim under s. 65 of the *Act*. Accordingly, I dismiss this portion of his claim without leave to reapply.

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.

The Tenant alleges the Landlord failed to adequately protect his right to the quiet enjoyment with respect to his disputes with the other occupants at the building. I have reviewed the evidence provided by the parties with respect to the other matter. It is not clear to me that the Landlord breached its obligations under the *Act* in any way. K.S. testified that she took steps to investigate the Tenants complaints at the building. She indicates that no evidence was found to support any of the alleged disruptions or noise issues were present.

The Tenant is essentially arguing that the Landlord is displaying favouritism and is not taking his side with respect to his disputes with the other occupants. The Tenant's position, however, presupposes that the Tenant is an innocent victim in all these disputes. The statements from the other occupants at the building all carry a similar narrative: that the Tenant yells at others, is confrontational, is aggressive, and is otherwise disruptive. This is confirmed by the affirmed testimony of K.S. and M.W., both of whom confirm having been the target of the Tenant's ire.

The Tenant argues that all the evidence presented by the Landlord is false and fabricated. I do not find that to be likely. What the Tenant alleges is a conspiracy perpetrated by several other individuals who live at the building and members of the board of directors for the Landlord. The Tenant has no evidence to support that the others are lying other than his asserted statement that this is the case. The Tenant's documentary evidence is largely in the form of written submissions which reiterate the same allegations and arguments. This is not evidence of falsehoods and is merely a written argument to what the Tenant spoke to at the hearing.

Looking specifically at the allegation of assault in June 2021, the Tenant's evidence includes a written submission that he was slapped. The Landlord's evidence includes a statement from J.F. in which she alleges that the Tenant was in her face yelling at her when she moved his bicycle away from a raised garden bed she was weeding. J.F. indicates in her statement that the Tenant continued to yell at her and she swung at him and "glazed his chin but did not connect with his chin or hit him". I do not condone J.F.'s actions. However, the Tenant yelled at her in her face over a trifling dispute of her moving his bicycle. In any event, the police were notified, and they reviewed the matter. Nothing came of the incident.

It is unreasonable, in my view, for the Tenant to expect the Landlord to take his side in his disputes when he is the one who initiates them. It is clear based on the evidence that the Tenant is very much the cause to the disruptions to his quiet enjoyment.

I find that the Tenant has failed to establish that the Landlord failed to protect his right to the quiet enjoyment of the rental unit and residential property. His claim for monetary compensation under s. 67 of the *Act* is dismissed without leave to reapply.

Conclusion

The Tenant's claims under ss. 47, 32, and 62 of the *Act* are moot given that the tenancy is over. These claims are dismissed without leave to reapply.

The Tenant failed to prove his claims under ss. 65 and 67 of the *Act*. These claims are dismissed without leave to reapply.

The Tenant was unsuccessful in his application. I find that he is not entitled to the return of his filing fee. His claim under s. 72 of the *Act* 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: September 07, 2022

Residential Tenancy Branch