



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE, LAT, FFT, MNDCT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The tenant applied on May 18, 2022 for:

- an order for the landlord to comply with the Act, regulation, and/or tenancy agreement;
- an order to suspend or set conditions on the landlord's right to enter the rental unit;
- authorization to change the locks to the rental unit; and
- the filing fee.

The tenant amended his application on September 8, 2022, seeking:

- compensation for monetary loss or other money owed.

Those in attendance were affirmed and made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The parties confirmed receipt of each other's materials.

Preliminary Matter

The landlord had submitted a request to join this application with another, which I declined in accordance with Rule 6.2.

Issues to be Decided

- 1) Is the tenant entitled to an order for the landlord to comply with the Act, regulation, and/or tenancy agreement?
- 2) Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?
- 3) Is the tenant entitled to authorization to change the locks to the rental unit?
- 4) Is the tenant entitled to compensation for monetary loss or other money owed?
- 5) Is the tenant entitled to the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here.

The parties agreed on the following particulars regarding the tenancy. It began August 1, 2015; rent is \$1,025.00, due on the first of the month; and the tenant paid a security deposit of \$447.50, which the landlord still holds.

The parties agreed that a couple used to be the landlords and that since the end of their relationship, one of the couple, RM, has become the only landlord.

Evidence submitted by the landlord includes materials regarding an additional dispute of a Two Month Notice to End Tenancy for Landlord's Use, which is not before me. That dispute number is noted on the cover page of the decision, along with 2 other files. It is apparent that the parties have an acrimonious relationship.

Tenant's claim for an order for the landlord to comply with the Act, regulation, and/or tenancy agreement

In his application for an order for the landlord to comply with the Act, regulation, and/or tenancy agreement, the tenant stated that the landlord is harassing him and his guests against section 28 of the Act. This section protects a tenant's right to quiet enjoyment. The tenant's application states that the landlord is infringing on his privacy through their illegal entry to his unit, and attempting to kick his door in, which has resulted in his loss of quiet enjoyment.

When asked about this claim, the tenant testified he is being harassed, and that is why he wants to limit the landlord's access to his unit. The tenant referred to items in the

landlord's evidence he said were not true. The tenant testified his monetary claim is for harassment.

I attempted to redirect the tenant's testimony back to his claim several times.

The tenant testified that the first incident of harassment occurred when he was washing his car, and the landlord treated him aggressively and differently than she did other tenants. The tenant testified that the landlord instructed the property management at the time to put locks on all the faucets. The tenant referenced a 2016 incident in which the landlord allegedly knocked at the tenant's window and made accusations against the tenant. The tenant testified that he had become friendly with the landlord's now ex-spouse. The tenant referred me to evidence which had been submitted in previous RTB disputes.

The tenant submitted as evidence the following items in support of this claim:

- a Two Month Notice to End Tenancy for Landlord's Use of Property, dated May 26, 2021;
- a previous Residential Tenancy Branch (RTB) decision regarding the same Two Month Notice and a monetary claim;
- a written submission from a previous RTB dispute;
- a written submission stating that in May 2020, the tenant received a letter stating that his "lease would be terminated" which had been initiated by one of the landlords, but that after the tenant spoke with the other landlord, the letter was withdrawn;
- a previous RTB decision regarding a Two Month Notice dated Jan 28, 2022;
- a May 3, 2022 email from the landlord, giving notice they will be doing an inspection on May 5; it does not list the tenant's unit as one that will be inspected;
- a Two Month Notice dated May 27, 2022;
- 52-pages comprising the tenant's affidavit and exhibits from a previous RTB dispute;
- a 66-page evidence package regarding a previous RTB dispute;
- a May 6, 2022 police report regarding a break and enter; and
- a May 10, 2022 police report regarding a break and enter in progress.

I note that I am not able to consider as evidence materials submitted as part of previous RTB disputes.

Tenant's claim to suspend or set conditions on the landlord's right to enter the rental unit or site

In his application to suspend or set conditions on the landlord's right to enter the rental unit or site, the tenant stated that his unit has twice been illegally entered without proper notice, and that his security is compromised because the landlord/manager attempted to kick in his door, causing damage to the door and lock.

The tenant submitted as evidence the following items in support of this claim:

- a written submission dated July 23, 2017, from a previous RTB dispute;
- a written submission dated April 21, 2021, from a previous RTB dispute;
- a written submission dated September 3, 2021, from a previous RTB dispute;
- written submissions from the tenant describing the following incidents with the landlord:
 - the landlord speaking in a hostile manner to the tenant's assistant;
 - around April 20, 2019, the landlord telling the tenant in a hostile manner that he could not wash his car or park it at the side of the building to facilitate unpacking it following a trip;
 - the landlord told the tenant that if he associates with her ex-spouse/the former other landlord, the tenant will be evicted; subsequently the landlord became angry when the tenant refused to work for her, resulting in the tenant fearing the landlord;
 - in April 2016, while angry about an issue unrelated to the tenant, the landlord spoke to the tenant through his window, and wagged her finger at the tenant, stating: "You wait, you wait, you wait," resulting in the tenant being afraid to open his windows or blinds;
 - the landlord threw her phone against the side of the building, smashing it after something angered her; and
 - guests of the tenant have seen the landlord peering into his windows, including a bathroom window;
- an undated note from the landlord, asking that laundry be picked up on time, and stating they have pictures to prove that a bucket has been left there overnight; also submitted is a photo of a second note, regarding when laundry was started;
- a letter dated January 15, 2022, with the writer's name redacted, which states that they have lived at the property for a number of years, though the number is redacted, and that they have requested their personal information redacted as they "fear increased harassment and reprisal from my landlady, [RM]." The letter states the writer has been harassed by RM, and is "aware of other

- tenants who have experienced harassing, threatening, intimidating, unusual and inappropriate behaviour” from RM;
- a Word document containing a May 5, 2022 email exchange between the landlord’s adult daughter (SMS) and the tenant, in which SMS states that the tenant was scheduled for a monthly inspection, as no one answered when SMS knocked, they entered the unit, activating the tenant’s alarm, so SMS called the alarm company to inform them it was property management who had entered the unit. The tenant’s reply states that he did not receive notice, and requests the management not to enter his unit illegally and without proper notice. SMS response states that they did not enter the tenant’s unit;
 - a Word document stating that the following video evidence is available on request: the landlords making multiple illegal entries into unit on May 6, 2022, and SMS attempting to kick in the door of the unit on May 10, 2022;
 - an MP4 file, which is 55 seconds of audio. There is a beeping, voices, then a loud alarm and an electronic voice announcing an alarm;
 - an MP4 file, 38 seconds long, in which the loud alarm and electronic voice can be heard; and
 - a text document with instructions on viewing the provided mp4 video files using a cell phone.

Tenant’s claim for authorization to change the locks to the rental unit

In his application for authorization to change the locks to the rental unit, the tenant stated that the landlord has lost two arbitrations and multiple threats of eviction, and that the landlords/management have demonstrated a lack of self control, and aggressive and abusive behaviour, both verbal and physical. The application states the landlord has lied in writing about entering the tenant's unit and that the landlord recanted only when investigated by law enforcement. The tenant states he has no sense of safety and security. The application states that new building policy has resulted in a door to the exterior of the property, which used to be locked, now remaining unlocked at all times.

The tenant submitted as evidence the following items in support of this claim:

- a Word document containing a March 2022 email exchange between the tenant, a property management company, and SMS, in which the tenant expresses concern about the safety of a child playing on the property, and as he has found an exterior door unlocked or standing open on multiple recent occasions. SMS replied, stating that the tenant does not need to worry as his unit is protected by an alarm system, and that the exterior door will remain unlocked;
- three short MP4 files, in which a loud banging can be heard, and a self-described guest of the tenant can be heard stating that following an arbitration hearing, the building manager “almost kicked the door in,” has “cracked the door,” “called me a lying bitch,” “told me to fucking leave,” and said “you don’t belong here.” No other person’s voice can be heard in the audio;
- four photos depicting some cracking around the door lock; and
- an email to the tenant, dated May 11, 2022, in which a person describes the door being kicked hard as they approach it; “SM” swearing at the writer, telling them to get out; and the writer stating that [SM] almost kicked the door in, cracking it.

Tenant’s claim for compensation for monetary loss or other money owed

In his amendment to apply for monetary compensation, the tenant provided a written statement that he is seeking \$5,000.00 for loss of quiet enjoyment, as the landlord has tried to evict him 4 times in the last 5 years, which was twice prevented by the previous co-landlord, and twice by the RTB determining that the current landlord was acting in bad faith. The tenant submitted that during the 5 years, the landlord “has acted in inappropriate ways, spying thru [sic] windows, challenging and distressing my guests, and entering my apartment without proper written notice.” The tenant submits that after the landlord was unsuccessful in a recent RTB arbitration, SMS tried to kick in his door, frightening his guest. The tenant has provided a breakdown of the \$5,000.00 claimed, based on rent paid over 5 years and the “total period of uncertainty” over the last 5 years as the result of receiving 4 eviction notices, totalling 273 days of uncertainty created by the actions of the landlord, or 14.9% of the 5-year period.

Responsive evidence submitted by the landlord includes:

- a July 22, 2022 letter introducing tenants to the new property management company;
- a written submission from the landlord, dated September 14, 2022, stating that:
 - the tenant makes false claims;
 - she has had no direct contact with the tenant for 4 to 5 years;

- the property has been professionally managed since 2007, with the exception of April to July 2022;
- she was not trying to gain unlawful entry into the tenant's unit during the monthly property inspection;
- she was not present when SMS kicked the tenant's door;
- a written submission from SMS, dated April 26, 2022, including that:
 - she and her family of 4 moved into a unit across from the tenant's, and intend to occupy the tenant's unit as well;
- a written submission from SMS, dated September 7, 2022, including that:
 - in early May 2022, as a new acting property manager, she accidentally sent out an inspection notice which included her unit number instead of the tenant's. When she and the landlord entered the tenant's unit, it set off a loud alarm, and they stepped inside the unit, the landlord looking for a security keypad to perhaps turn off the siren. Failing that, they left the unit, shut the door, and notified the alarm company and the tenant;
 - following an unsuccessful RTB hearing in May 2022, in which the tenant successfully disputed a Two Month Notice for Landlord's Use of Property, SMS passed the tenant's door and "experienced a complete lapse in rational judgement," kicked the door, and when she heard someone's voice from within the apartment, her "embarrassment and remorse came out in an angered reply to them";
- a May 3, 2022 email to tenants, noting there will be an inspection on May 5, 2022, and listing SMS's unit number, not the tenant's;
- a May 5, 2022 email to the tenant, stating that his alarm went off when they entered to do a scheduled inspection; and
- a May 5, 2022 email to the tenant, explaining that SMS accidentally put her unit number on the inspection notice rather than the tenant's, and that she keeps mixing up their unit numbers, even accidentally including her mother's/the landlord's unit number on the inspection notice.

The current property manager, GH, testified that with the exception of a few months, the property has been professionally managed since the tenant moved in.

GH provided testimony supporting SMS's earlier testimony that she had accidentally put her unit number on the inspection notice instead of the tenant's, and testified that SMS had apologized to the tenant.

The tenant testified that the landlord's and SMS's version of what happened on the day of the alarm has changed, referring me to the video submitted as evidence. The tenant

stated that they had entered the unit a second time and “wandered through,” and that their entry was not an accident.

Analysis

As previously referenced, I am not able to consider as evidence materials submitted as part of previous RTB disputes.

Tenant’s claim for an order for the landlord to comply with the Act, regulation, and/or tenancy agreement

Section 28 of the Act includes:

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]*;

The tenant has referenced landlord RM harassing him in various ways, including serving him with multiple Two Month Notices. In support, the tenant has provided documents of his own creation, and a redacted letter from another tenant. Landlord RM submits that she has not had “no direct contact” with the tenant for 4 to 5 years.

I note that the Act permits a landlord to serve a notice to end tenancy on a tenant.

The tenant submitted that the landlord and SMS have, on two occasions, entered his unit without giving proper notice. One occasion was on May 5, 2022; it is not clear to me if the tenant alleges the second occasion was on the same day. The tenant submitted video evidence which his application stated showed the landlord and SMS “wandered through” the rental unit; however, the video was not provided in a format I could view, as required by Rule 3.10.5.

SMS has provided testimony and documentary evidence in support of her claim that she accidentally put her unit number on the inspection notice instead of the tenant’s, and property manager GH has testified in support of SMS’s version of events. I accept

SMS's explanation that the error and subsequent entry to the tenant's unit on May 5, 2022 without notice was an accident.

In her written submission, SMS confirmed that in May 2022, while acting property manager, she kicked the tenant's door and responded to the person inside with "an angered reply" following an unsuccessful RTB dispute. While SMS submitted that she is remorseful about the event, I accept that from the tenant's perspective, her behaviour was both aggressive and intimidating. I also note that SMS and the tenant live in close proximity, across from each other.

Considering the foregoing, I grant the tenant's claim, and order the landlord comply with the Act, including to ensure that, in accordance with section 28, the tenant's entitlement to quiet enjoyment of the rental unit is protected.

Tenant's claim to suspend or set conditions on the landlord's right to enter the rental unit or site

Section 29 of the Act includes that:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

The tenant has submitted that SMS and the landlord twice entered his unit without providing proper notice, but as noted above, I was not able to view the tenant's video evidence as submitted.

As described regarding the previous claim, I accept SMS's testimony, witness testimony, and documentary evidence that she accidentally put her unit number on the inspection notice instead of the tenant's, and that her and the landlord's subsequent entry to the tenant's unit on May 5, 2022 without notice was an accident. SMS has

submitted that her mother/the landlord entered the tenant's unit briefly to try to turn off the siren, but was unsuccessful, and quickly left the unit.

The tenant has not submitted clear evidence of other times the landlord or her representative has entered the rental unit without notice.

As I find the landlord's entry without notice was an accident, and the tenant has failed to demonstrate a requirement to suspend or set conditions on the landlord's right to enter the rental unit, I dismiss the tenant's claim.

Tenant's claim for authorization to change the locks to the rental unit

Section 31(3) of the Act states:

(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

The tenant has testified that SMS and the landlord kicked his door, damaging it and frightening his guest, and the tenant has submitted audio evidence suggesting that someone spoke to the tenant's guest in an intimidating manner, swearing at her and telling her she should leave. The tenant has submitted as evidence photos of cracks around the door lock, and a police report which records "minimal" damage to the door.

The landlord has submitted that she was not present during the event; SMS has confirmed in her written submission that in a lapse of judgement SMS kicked the tenant's door and spoke to the person inside in anger, and that her mother/the landlord was not present at the time.

I note that SMS lives in the unit across from the tenant, is the landlord's daughter, and at the time of the incident, was acting as an agent of the landlord.

In his written submission, the tenant has described that the landlord/management has demonstrated aggressive behaviour and a lack of self control, and that as a result, he has no sense of safety or security. While I accept the landlord's and SMS's submissions that the landlord was not present during the incident, I find that the submissions of both the parties support the tenant's assertion that SMS, acting property manager at the time, demonstrated aggression toward the tenant, and a lack of self control.

Therefore, I grant the tenant's claim; in accordance with section 31 of the Act, the tenant is authorized to change the locks to the rental unit.

Pursuant to section 72, the tenant is authorized to deduct from a future rent payment the costs associated with changing the lock on the rental unit.

Tenant's claim for compensation for monetary loss or other money owed

Section 7 of the Act includes:

7 (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.

Section 67 of the Act and [Policy Guideline 16](#) provide that if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 includes:

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; and
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss.

As noted previously in the decision, the parties agree that, while acting property manager, SMS kicked the tenant's door hard enough to cause damage, then spoke in anger to his guest, actions which I found failed to comply with section 28 of the Act, which entitles a tenant to quiet enjoyment of their rental unit, including freedom from unreasonable disturbance.

The tenant has submitted that as a result of SMS's non-compliance with section 28 of the Act, he has lost his sense of safety and security, which I consider loss or damage as contemplated by Guideline 16.

The tenant has applied for \$5,000.00 for loss of quiet enjoyment, as the landlord has tried to evict him 4 times in the last 5 years, and "has acted in inappropriate ways, spying thru [sic] windows, challenging and distressing my guests, and entering my apartment without proper written notice." The tenant has provided a breakdown of the \$5,000.00 claimed, based on rent paid over 5 years and the "total period of uncertainty" over the last 5 years due to receiving eviction notices.

I acknowledge that the landlord has served the tenant with multiple Two Month Notices, but find that SMS has provided a reasonable explanation for the notices, submitting that the landlord intends for SMS and her family to occupy the tenant's unit.

While the tenant has testified that he has been harassed by the landlord for years, I find he has not provided strong evidence in support of this claim. Additional to his evidence related to the May 5 event, which I accept the landlord was not present for, the tenant has provided as evidence his own written submissions, and a redacted letter from another tenant, which does refer to landlord RM harassing them and other tenants, but is vague, providing no examples or dates. The tenant has not provided witness testimony or other documentary evidence in support of his claim of ongoing harassment by the landlord.

The landlord has submitted that she has had no direct contact with the tenant for 4 to 5 years.

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

With respect to the tenant's allegation that the landlord has harassed him for years, I find the tenant has not provided sufficient evidence to prove this claim.

As explained regarding earlier claims, I accept SMS's submissions and evidence that the entry to the tenant's unit without notice was done in error.

Considering the foregoing, while I find the tenant has failed to prove he is entitled to \$5,000.00, because the parties agree that SMS kicked the tenant's door while in the

role of acting property manager, I find there has been an infraction of the tenant's legal right to quiet enjoyment, pursuant to section 28 of the Act.

Therefore, I find the tenant is entitled to a monetary award in the amount of \$1,000.00.

Pursuant to section 72 of the Act, the tenant is authorized to make a one-time deduction of \$1,000.00 from a future rent payment in satisfaction of the above-noted award.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in his application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

I order the landlord comply with the Act, including to ensure, in accordance with section 28, the tenant's entitlement to quiet enjoyment of the rental unit.

I dismiss the tenant's claim for an order to suspend or set conditions on the landlord's right to enter the rental unit.

I order that the tenant may change the locks to the rental unit, in accordance with section 31 of the Act. Pursuant to section 72, the tenant is authorized to deduct from a future rent payment the costs associated with changing the locks on the rental unit.

The tenant is awarded monetary compensation in the amount of \$1,000.00. Pursuant to section 72 of the Act, the tenant is authorized to make a one-time deduction of \$1,000.00 from a future rent payment in satisfaction.

I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution. Pursuant to section 72 of the Act, the tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction.

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: October 27, 2022

Residential Tenancy Branch