



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, AAT, PSF, LRE, LAT, OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant June 17, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities (the “Notice”)
- For an order that the Landlord allow access to the unit
- For an order that the Landlord provide services or facilities required by the tenancy agreement or law
- To suspend or set conditions on the Landlord's right to enter the rental unit
- For authorization to change the locks to the rental unit
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- For compensation for monetary loss or other money owed
- To recover the filing fee

Some of the above claims were added to the Application through two amendments.

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant. I told the Tenant they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and amendments. I did not address service of the Tenant’s evidence because the only evidence submitted by the Tenant was a copy of the Notice and proof of service. I did not address service of the Landlord’s evidence because the Landlord did

not appear at the hearing to present their evidence and therefore, I have not considered it pursuant to rule 7.4 of the Rules.

The Tenant testified that they served the hearing package on the Landlord in person within a day or so of the filing the Application.

The Tenant testified that they served the first amendment to the Landlord at the Landlord's residence by registered mail. The Tenant submitted documentary evidence of service with Tracking Number 765 on it. I looked this Tracking Number up on the Canada Post website which shows the package was sent July 06, 2022, and delivered July 08, 2022.

The Tenant testified that they served the second amendment to the Landlord by registered mail. The Tenant provided Tracking Number 917 in relation to this package. I looked this Tracking Number up on the Canada Post website which shows the package was sent October 19, 2022, and delivered October 21, 2022.

Based on the undisputed testimony of the Tenant, I am satisfied the Landlord was served with the hearing package in accordance with section 89(1)(a) of the *Residential Tenancy Act* (the "*Act*"). I accept that the Tenant sent the hearing package within a few days of it being provided by the RTB and I find the timing of service sufficient. I note that the Landlord must have received the hearing package because the Landlord uploaded evidence for the hearing.

Based on the undisputed testimony of the Tenant, documentary evidence of service and Canada Post website information, I am satisfied the Landlord was served with the first amendment in accordance with section 89(1)(c) of the *Act*. Based on the Canada Post website information, I find the Landlord received the first amendment July 08, 2022, well before the hearing. I find the timing of service sufficient.

Based on the undisputed testimony of the Tenant and Canada Post website information, I am satisfied the Landlord was served with the second amendment in accordance with section 89(1)(c) of the *Act*. Based on the Canada Post website information, I find the Landlord received the second amendment October 21, 2022, 13 days before the hearing. Pursuant to rule 4.6 of the Rules, the Tenant should have served the second amendment on the Landlord 14 days prior to the hearing. However, because the amendment was served only one day late, and because the Landlord did not appear at the hearing to raise an issue with timing of service, I allow the amendment. I also note

that 13 days was more than enough time to allow the Landlord to at least call into the hearing, which the Landlord did not do.

As I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

The Tenant advised that they no longer live in the rental unit and are only proceeding with their request for compensation and to recover the filing fee. The remaining requests are dismissed without leave to re-apply because they are no longer relevant given the Tenant does not live in the rental unit.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Tenant testified as follows. There was a verbal tenancy agreement between the parties. The Tenant moved into the rental unit April 15, 2022. The tenancy was a month-to-month tenancy. Rent was \$1,200.00 pre month due on the first day of each month. The Tenant did not pay a security deposit.

The Tenant confirmed they did not share space with the Landlord and lived in a separate rental unit/suite with their own bathroom and kitchen.

The Tenant confirmed their entire compensation request is outlined in the second amendment which includes the following:

1. Loss of rent June 20, 2022 \$4,800.00
2. Job loss June 20, 2022 \$8,665.00
3. Storage \$800.00
4. Moving and expenses \$250.00
5. Total = \$14,515.00

The Tenant further testified as follows.

The Landlord issued the Tenant the Notice. The Tenant disputed the Notice, and a hearing was set. A few days later, on June 20, 2022, the Landlord put the Tenant's belongings out on the side of the street and changed the locks to the rental unit. The Landlord did not have an Order of Possession at the time. The Landlord sent the Tenant photos of their belongings on the side of the street and the Tenant left work immediately to deal with this issue. When the Tenant returned to work later that afternoon, the Tenant was fired for leaving work. The Tenant did not get another job until September 20, 2022, and therefore lost wages and is seeking compensation for this (\$8,665.00).

The Tenant was without a home and without a job due to the Landlord's actions. The Tenant had to stay at their friend's place and pay part of their rent. The Tenant paid \$800.00 per month to stay at their friend's place. The Tenant did not get a new home until October 01, 2022. The Tenant is seeking compensation for being unlawfully evicted and asking for \$4,800.00, which is the rent they would have paid for four months at the rental unit.

The Tenant is seeking the cost of hiring a moving truck to move their belongings after being unlawfully evicted.

Once evicted from the rental unit, the Tenant had to pay \$200.00 per month to store their belongings for four months.

The Tenant had paid rent for June when the Landlord unlawfully evicted them June 20, 2022.

When the Landlord put the Tenant's belongings on the side of the street, the Tenant lost some of their belongings and items such as photos. The Landlord's actions turned the Tenant's life upside down for four months.

The Tenant did not submit documentary evidence relevant to their compensation claim.

Analysis

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

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

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Section 31 of the *Act* states:

31 (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

- (a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

Section 57(2) of the *Act* states:

(2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I accept that the circumstances occurred as stated by the Tenant because the Tenant's testimony is undisputed.

I accept that the Landlord removed the Tenant's belongings from the rental unit, put them on the side of the street and changed the locks to the unit. I find the Landlord breached sections 31 and 57(2) of the *Act*. I find that the Landlord's breach is one of the most egregious breaches of the *Act*.

I accept the Tenant suffered loss and damage due to the Landlord's breach. I accept the Tenant lost some of their belongings. I accept the Tenant lost their job due to having to address the urgent situation caused by the Landlord's breach. It is obvious the Tenant lost their home due to the Landlord's breach. I accept that the Tenant had to hire a moving truck to move their belongings on an urgent basis due to the Landlord's breach. I accept the Tenant had to put their belongings in storage and pay for storage for four months due to the Landlord's breach.

I accept that the amount or value of the damage or loss experienced by the Tenant amounts to \$14,515.00 because this position of the Tenant's is undisputed. I acknowledge that the amounts claimed for loss of rent and job loss are somewhat unusual; however, I also acknowledge that it is difficult to quantify in financial terms the loss and damage caused by the Landlord unlawfully evicting the Tenant from their home. I accept that the Tenant experienced loss of their home and loss of their job as a direct result of the Landlord's actions and therefore I accept how the Tenant has calculated the amounts claimed. Further, again, the Landlord did not appear at the

hearing to dispute the amounts sought, and therefore, the Tenant has met their onus to prove the amount or value of the loss or damage.

I accept the Tenant mitigated their loss by attending to their belongings immediately so that further belongings did not go missing. Further, I find the amounts claimed reasonable in the circumstances.

I find the Tenant has proven they are entitled to the amounts claimed and I award the Tenant \$14,515.00 pursuant to section 67 of the *Act*.

Given the Tenant has been successful in the Application, I award the Tenant \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

I issue the Tenant a Monetary Order for \$14,615.00 pursuant to section 67 of the *Act*.

Conclusion

The Application is granted.

The Tenant is issued a Monetary Order for \$14,615.00. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it may be filed in 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 *Act*.

Dated: November 04, 2022

Residential Tenancy Branch