



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenants: CNR, CNL, MNDCT, OLC, FFT
Landlord: OPL, MNRL-S, FFL

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Two Month Notice to End Tenancy, pursuant to section 49;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

On November 1, 2022, the tenants filed an amendment to their application for dispute resolution which added the following claims:

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46; and
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Landlord's Use of Property, pursuant to sections 49 and 55;
- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38;
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

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

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Amendment

The landlords' application for dispute resolution lists landlord K.H. and landlord J.Z. as landlords. The tenants' application for dispute resolution only lists landlord K.H. as a landlord. Landlord K.H. testified that J.Z. is his wife and co-owner of the subject rental property.

I find that J.Z. meets the definition of landlord found in section 1 of the tenancy agreement. Pursuant to section 64 of the *Act*, I amend the tenants' application for dispute resolution to list both landlord K.H. and landlord J.Z. as landlords.

Preliminary Issue- Service

The tenants testified that they served the landlord with their application for dispute resolution and evidence via registered mail on July 21, 2022. The landlord testified that he received the above package. I find that the landlord was served with the above documents in accordance with section 88 and 89 of the *Act*.

Both parties agree that the tenants' amendment and evidence were served on the landlord in person on November 1, 2022. I find that the above documents were served in accordance with section 88 of the *Act*.

The landlord testified that he served the tenants with his application for dispute resolution and evidence via registered mail. The landlord entered into evidence a registered mail receipt dated October 5, 2022 which shows that two registered mail packages were sent. The landlord also entered into evidence photographs of the envelopes sent to each tenant bearing the same tracking numbers found on the receipt.

The tenants testified that they did not receive the above documents. The tenants testified that the landlord has a no contact order with them which included restricting the

landlords' ability to contact them through mail, so they ignored all mail from the landlords. The tenants did not enter into evidence the no contact order.

The landlord did not dispute the existence of a no contact order but testified that it did not restrict him from serving documents via mail.

Based on the landlord's testimony and the Canada Post receipt and photographs of the envelopes entered into evidence, I find that the landlord served the tenants with the landlord's application for dispute resolution and evidence in accordance with sections 88 and 89 of the *Act*. I find that the tenants were deemed served with the above documents on October 10, 2022, in accordance with section 90 of the *Act*.

I find that the tenants have not proved, on a balance of probabilities, that the landlord was not permitted to serve them via registered mail as no documentary proof of the terms of the no contact order were entered into evidence and the landlord disputed the tenants' testimony. Failure to pick up registered mail does not invalidate the deeming provision found in section 90 of the *Act*.

Preliminary Issue- Tenancy Ended

Both parties agree that the landlord was issued an Order of Possession for the subject rental property in a Direct Request Decision dated November 23, 2022. The file number for the Direct Request Decision is located on the cover page of this decision.

The Direct Request Decision states:

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,400.00, as per the tenancy agreement.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five-day period.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, September 21, 2022.

Therefore, I find that the landlords are entitled to an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act.

I find that since an Order of Possession has already been issued to the landlord and this tenancy has already been deemed to have ended, I find that the only tenant claims that are still relevant are the tenants' claims for

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

I dismiss all other claims made by the tenants, as the claims are predicated on an ongoing tenancy, and this tenancy has ended.

I find that since an Order of Possession has already been issued to the landlord and this tenancy has already been deemed to have ended, I find that the only landlord claims that are still relevant are the landlord's claims for:

- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

I dismiss all other claims made by the landlords, as the claims are predicated on an ongoing tenancy, and this tenancy has ended.

The landlord testified that he is no longer seeking any of his monetary claims but would like to recover the filing fee. Pursuant to the above, the landlord's claims for a Monetary Order for unpaid rent and authorization to retain the tenants' security deposit are dismissed with leave to reapply,

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the tenants entitled to recover the filing fee for their application from the landlord, pursuant to section 72 of the *Act*?

3. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2021. Monthly rent in the amount of \$1,400.00 was payable on the first day of each month. A tenancy agreement signed by landlord K.H. and the tenants was entered into evidence.

The tenants testified that they are seeking three months' rent as compensation for the landlords' breach of section 13 of the tenancy agreement. Section 13 of the tenancy agreement states:

13.LANDLORD'S ENTRY INTO RENTAL UNIT

- 1)For the duration of this tenancy agreement, the rental unit is the tenant's home and the tenant is entitled to quiet enjoyment, reasonable privacy, freedom from unreasonable disturbance, and exclusive use of the rental unit.
- 2)The landlord may enter the rental unit only if one of the following applies:
 - a)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant a written notice which states
 - i)the purpose for entering, which must be reasonable, and
 - ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant agrees otherwise;
 - b)there is an emergency and the entry is necessary to protect life or property;
 - c)the tenant gives the landlord permission to enter at the time of entry or not more than 30 days before the entry;
 - d)the tenant has abandoned the rental unit;
 - e) the landlord has an order of an arbitrator or court saying the landlord may enter the rental unit;

f) the landlord is providing housekeeping or related services and the entry is for that purpose and at a reasonable time.

3)The landlord may inspect the rental unit monthly in accordance with subsection (2) (a).

4)If a landlord enters or is likely to enter the rental unit illegally, the tenant may apply for an arbitrator's order under the Residential Tenancy Act, to change the locks, keys or other means of access to the rental unit and prohibit the landlord from obtaining entry into the rental unit. At the end of the tenancy, the tenant must give the key to the rental unit to the landlord.

The tenants testified that the RCMP have been called three times due to the actions of the landlords. The tenants testified that the first time they called the RCMP, the matter was resolved on the phone and the RCMP did not attend because there was not sufficient concern to proceed.

The tenants testified that the second time the RCMP were called was because landlord K.H. was aggressive and screamed at tenant T.F. through the front door and banged on the door with a heavy object. The tenants entered into evidence a photograph of her front door which shows marks on it.

Tenant T.F. testified that she used to sit outside in her backyard every day but can't anymore because of landlord K.H.'s actions. Tenant T.F. testified that she is afraid of landlord K.H. Tenant T.F. testified that landlord K.H. parked his vehicle close to her door to intimidate her.

The tenants testified that on one occasion landlord K.H. forcibly entered the subject rental property and knocked a phone out of tenant T.L.'s hand because she was recording the landlord. The above-described video was not entered into evidence.

The tenants testified that the RCMP were called a third time because landlord K.H. banged on the door and through the door threatened to put a bullet between tenant T.F.'s eyes. The tenants testified that they have a video of the encounter. No videos were entered into evidence. The tenants testified that they would produce the video upon request. I informed the tenants that pursuant to the Rules of Procedure, the tenants' evidence for the tenants' claim was required to have been submitted to the Residential Tenancy Branch and served on the other party at least 14 clear days before

this hearing. I informed the tenants that late evidence would not be accepted as it would be procedurally unfair to deprive the landlords of an opportunity to respond to that evidence in advance of today's hearing.

The tenants testified that they are seeking three months' rent because that is the duration of the police involvement, though they could seek four to five months' rent compensation.

Landlord K.H. testified that he has never forced entry or threatened to put a bullet between tenant T.F.'s eyes. The landlord testified that the tenants have been harassing his family, playing loud music and moving garbage bins.

Landlord K.H. testified that the tenants have provided no evidence to support their claims which are all "nonsense".

Landlord K.H. testified that the first time the police were called, the tenants pulled his garbage bin to the middle of the driveway and put their scooter super close to the door of his expensive automobile. Landlord K.H. testified that the police talked only to the tenants and told them to move the scooter and not to harass the landlords.

Landlord K.H. testified that he called the police the second time because the tenants were playing loud music at 3:00 a.m. and his family couldn't sleep.

The landlords entered into evidence a synopsis request from the RCMP which states:

The following is a synopsis of our file, as per your request dated July 26, 2022. As dictated by the Privacy Act, I can only reveal information pertaining to yourself.

On June 30, 2022 Police attended to a residence in [subject rental city] for a report that you were yelling and banging on the front door of the basement suite. Upon attendance, Police spoke to the complainant and yourself. You advised Police that your son had been sleeping however the tenant downstairs started playing loud music. You told Police that when you went downstairs to tell them to shut down the music, however they didn't listen and shut the door. You advised that there have been ongoing issues and that you had already served an eviction notice. Police advised both parties to keep their respective doors shut and

contact the residential tenancy branch to resolve any civil issues. Police investigations determined no criminal offences occurred. Our file is concluded.

The landlord testified that he called the police the third time because after he posted the 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) on the tenants’ door, the tenant threw the Notice at his father-in-law and cursed at him.

The landlord testified that he never hit or threatened the tenant and has never forced entry into the subject rental property.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this 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 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or 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; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The tenants testified that the landlord has forced entry into the subject rental property, struck a phone out of tenant T.F.'s hand and threatened to put a bullet between tenant T.F.'s eyes. Landlord K.H. disputed all of the above testimony and testified that it is the tenants who are harassing the landlords.

The tenants did not provide any documentary evidence other than a picture of their front door, to prove the truth of their testimony and did not call any witnesses. I find that the tenants have not proved that the marks on the front door were caused by landlord K.H. banging on the door. The alleged videos of the alleged encounters with landlord K.H. were not entered into evidence. I find that the tenants have not proved, on a balance of probabilities, that their version of events is the truth.

Based on the evidence of both parties and the police synopsis, I find that landlord K.H. has banged on the tenants' door because loud music was played late at night. I find that one occurrence of banging on the door when loud music is played, is not a breach of section 13 of the tenancy agreement. I find that the tenants have not proved that the landlord forcibly entered the subject rental property, struck the tenant or threatened the tenant.

I find that since the tenants have not met their burden of proof, their claim fails because the tenants have not proved that the landlord breached the *Act*, tenancy agreement or regulation. The tenants' application for monetary damages and recovery of the filing fee are therefore dismissed without leave to reapply.

As the landlord did not pursue any claims in this hearing, I decline to award the landlord the cost of the filing fee. The landlords' application for recovery of the \$100.00 filing fee is dismissed without leave to reapply.

Conclusion

The tenant's application for a Monetary Order for damage and compensation pursuant to section 67 of the *Act* and recovery of the filing fee are dismissed without leave to reapply.

The landlord's application for recovery of the filing fee 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: November 25, 2022

Residential Tenancy Branch