



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, LRE, LAT, RPP, OLC, FFT**

Introduction

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

1. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
2. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the Act;
3. An Order for authorization to change the locks to the rental unit pursuant to Section 70 of the Act;
4. An Order for the Landlord to return the Tenant's personal property pursuant to Sections 65 and 67 of the Act;
5. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act; and,
6. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, Landlord's Legal Counsel, Landlord's Support, the Tenant, and two Witnesses, MO and JL, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

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

Both parties acknowledged receipt of:

- the Tenant's Notice of Dispute Resolution Proceeding package served by registered mail on August 25, 2022, Canada Post Tracking Number on cover sheet of decision, the Landlord confirmed receipt, deemed served on August 30, 2022;
- the Tenant's evidence package served by attaching a copy to the Landlord's door on December 18, 2022, the Landlord confirmed receipt, deemed served on December 21, 2022; and,
- the Landlord's evidence package served by attaching a copy to the Tenant's door on December 23, 2022, the Tenant confirmed receipt, deemed served on December 26, 2022.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Preliminary Matter

Unrelated Claims

Prior to the parties' testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenant had indicated different matters of dispute in her application, the most urgent of which is the claim for compensation for a monetary loss. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenant's request for compensation for a monetary loss or other money owed and the claim for recovery of the application filing fee at this proceeding. The Tenant's other claims are dismissed with leave to re-apply.

Issues to be Decided

1. Is the Tenant entitled to a Monetary Order for compensation for a monetary loss or other money owed?
2. Is the Tenant entitled to a recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties and tenancy agreement confirmed that this tenancy began as a fixed term tenancy March 1, 2015. The fixed term ended on March 1, 2016, then the tenancy continued on a month-to-month basis. Monthly rent is \$880.00 payable on the first day of each month. A security deposit of \$400.00 was collected at the start of the tenancy and is still held by the Landlord.

The Tenant is seeking monetary compensation because she said the Landlord's conduct was "criminal and harassing". The Tenant said she kept asking the Landlord to stop recording while he was in her rental unit, and the Tenant submits he would not. She asserted that she was just asking him to wear a mask and he started screaming at her.

The Tenant said the Landlord came to her rental unit because he wanted to do another inspection. She said he was accusing her of doing damage to the rental unit. The Tenant referred me to audio recordings where the Tenant is asking why the Landlord needs to do another inspection, he did one last week. The Landlord's posted inspection notice was for 1:00 p.m., but the Landlord got sidetracked with a plumbing issue and instead came four hours later. In a second audio recording, the Landlord is audibly frustrated, but he asked the Tenant for ventilation to assist with remedying the condensation on the windows, he tells the Tenant that the bathroom fan is not enough. In the last audio file, the Tenant is upset because the Landlord started recording his entry into the Tenant's rental unit and she is saying 'you cannot do recordings in my place'. Near the end of this recording, she is upset saying, 'he's recording my stuff'.

For years, the Tenant claims her right to quiet enjoyment has been breached by the Landlord.

The Landlord has been a contractor for the last 10 years, and he testified that the current issues stem from two inspections that occurred this year. There has been major window condensation on all the Tenant's windows. The reason for this is because the Tenant covered the windows to the rental unit on the outside and the inside of the unit. There is also a door that joins the rental unit to the Landlord's upstairs living space, and the Tenant has sealed the bottom of that door. The Landlord stated this set-up has given rise to large amounts of condensation on all the windows.

The Landlord uploaded September 2019 pictures showing condensation on the windows in the rental unit. The Landlord had the window company who installed the

windows in 2014 to conduct a visual inspection of the basement windows in October 2019. The inspector observed condensation on two exterior windows on the north side of the home and also on an exterior window next to the basement entry door. The inspector also visited the adjoining duplex unit and observed that no windows throughout that house having the same amount of condensation on their windowpanes. Based on the Landlord's report that the windows are sealed with paper on the inside as well as the outside, the window company suspected the condensation issue may be due to poor ventilation.

After the first inspection on June 26, 2022, the Landlord observed the hardwood floor peeling away from its membrane. The Landlord also observed in the bathroom that laminate had peeled off from the board framing a cabinet. The Landlord asked the Tenant to open the windows to provide ventilation into the rental unit to lessen the amount of condensation on the windows and decrease the humidity levels in the rental unit. The Tenant did not do this.

On July 25, 2022, the Landlord posted another notice to do an inspection on July 31, 2022. The Landlord wanted to go into the rental unit at 1:00 p.m. but at 12:30 p.m. he noticed there was no hot water running in the home. He went to the boiler room to diagnose the problem. The Tenant messaged him at 2:27 p.m. informing him that there was no hot water in the house. The Landlord also noted he missed the July 31 inspection time at 1 p.m. The Landlord thought he would have to call a plumber to deal with the boiler issue. He asked the Tenant if he could come in and do the inspection. She informed him she was on a telephone call.

At 5:00 p.m., the Landlord noticed the Tenant's brother was there which is typical when there are inspections in the Tenant's rental unit. The Landlord called the Tenant to ask about coming in to do the inspection. The Tenant asked questions why he needed to do the inspection, but the Landlord said he had put this in the inspection request notice. The Landlord said there was lots of unnecessary conversation going back and forth. The Landlord said he was getting really frustrated with the Tenant and he agreed he used language that was not professional or courteous in manner.

During the inspection, the Landlord's wife was not present. Because of past inspections, where the Tenant has accused the Landlord of lying, the Landlord said he needed to record the inspection. The Landlord confirms there was no forced entry. As the Tenant had five days notice for the July 31, 2022 inspection, the Tenant had ample time to

prepare the rental unit for the inspection, which may mean putting away items she feels are personal in nature.

Over the seven years that the Tenant has rented from the Landlord, the Landlord has conducted seven inspections despite the fact that the Landlord is entitled to conduct an inspection once per month. Legal Counsel submitted that the Landlord gave the Tenant three days notice for the June 26 inspection and gave the Tenant five days notice for the July 31 inspection.

Witness JL is an academic professor in psychology. She said she is a colleague of the Tenant's. JL testified that on several occasions, the Tenant has called her in tears and distress. JL said these calls happened after the Landlord had been down in the Tenant's rental unit swearing and threatening her. JL stated that the Tenant has missed work because of the level of distress she has experienced after her dealings with the Landlord. JL maintains that the Tenant has experienced trauma responses such as breaking down into tears, she is afraid to go home, or she has spent the night at JL's home because she is afraid the Landlord is going to barge into her home. The Tenant is greatly disturbed by incidents over the years.

JL said she heard the Landlord yelling at the Tenant through a telephone call the Tenant made to JL on August 25, 2019. On July 31, 2022, the Tenant was very disturbed by the video recording the Landlord did during his inspection of the Tenant's rental unit. This was done without the Tenant's consent. JL said that the Tenant is a young woman living on her own, she is petite, and she was subjected to the Landlord's verbal threats. JL said the Tenant spoke about these incidents for weeks and weeks.

Witness MO testified that the Tenant, being in a basement suite, needs to prevent insects and spiders from coming into her suite. He stated that the blinds do not completely cover the windows, so for the Tenant it is also a privacy issue. He confirmed that the seal on the windows is not airtight.

The Landlord has the same type of flooring in his unit upstairs, and the floors are not peeling as like he saw in the Tenant's unit. There are two adults and one child living in the Landlord's home. The Landlord admitted that he did not go into the Tenant's rental unit with a mask, but when asked to put one on, he stated he went upstairs and found one to wear. The Landlord asked the Tenant to open the windows, which all have screens, to provide ventilation in the rental unit. The Landlord acknowledged that he lost

his temper with the Tenant, and he apologized to her in the hearing. He stated in the future, his wife will handle all future interactions with the Tenant.

Analysis

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.

Protection of tenant's right to quiet enjoyment

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;*

...

Landlord and tenant obligations to repair and maintain

32 *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*

- (a) complies with the health, safety and housing standards required by law, and*
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

...

RTB Policy Guideline #6-Entitlement to Quiet Enjoyment assists parties to understand issues that are likely to be relevant in a breach of quiet enjoyment claim. The basis for a finding of a breach of quiet enjoyment is set out in the guideline as:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment

means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, "*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*" This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze 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.

The Tenant submits that the Landlord has breached Section 28 of the Act. This claim stems from two inspections of the Tenant's rental unit, the first on June 26, 2022, the second on July 31, 2022. I note that the Landlord has inspected the Tenant's rental unit seven times in the last seven years. The Tenant referred to her written submissions

where she claims the Landlord had to deal with a “mysterious malfunction” of the boiler in the home. The Landlord’s submissions were that he was about to have a shower in his home and the hot water was not operating, so he went down to investigate the boiler to see if he could determine the issue with it.

The issue with the boiler began earlier in the day on July 31, 2022, and consumed the Landlord’s time while investigating the issue with it. The Tenant did finally text the Landlord at 2:27 p.m. that same day telling him that “There is no hot water Please check the boiler”. In fact, that was what the Landlord was doing. The Landlord has a legislative responsibility pursuant to Section 32(1)(a) of the Act to provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. I find the Landlord was dealing with his responsibilities of being a Landlord.

RTB Policy Guideline #6 states that a breach of Section 28 must be a substantial interference with the ordinary and lawful enjoyment of the premises. A temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. In this situation, it was two inspections, one of which the Tenant colours as “an intentional act of malice and manipulation by the landlord to further harass the tenant”.

I find the Landlord’s testimony more credible. I do not find that the Landlord has breached Section 28 of the Act. He knew he had boiler issues, he had discovered them earlier in the day on July 31 well before the Tenant sent him a text message. The Landlord was working on them. He was coming to the conclusion that he would have to call a plumber in to do the job. It seems between this Landlord and Tenant there are communication issues, the foundation of which go beyond my analysis of the Act. The Landlord apologized for his unbecoming language aimed at the Tenant voiced in a period of frustration on the Landlord’s part. The Landlord knows it is not acceptable on this one day, or on any other day. The Landlord said from now on, his wife will deal with the Tenant in personal communications which I believe would be wise.

I find the Landlord’s concerns are warranted, and he is entitled to investigate issues with the rental unit. The Tenant does not need to be present during a scheduled inspection. He has asked the Tenant to open windows so that ventilation can deal with the condensation problems on her windows. I find this is a reasonable request. There are screens on the windows which will deter insect or spider entry, and by collaborating with the Landlord, he will not feel concern needing to inspect her rental unit more frequently.

The Tenant has not acted reasonably to minimize any damage or loss she states she has experienced, she continues to keep her windows covered on the inside and outside. The Landlord does not have a past history of excessive inspection entries; however, even one entry seems to be too much for this Tenant. I do not find the Landlord has violated Section 28 of the Act, and I decline to award the Tenant the compensation she seeks.

As the Tenant was not successful in her claim, I do not grant her recovery of the application filing fee.

Conclusion

The Tenant's monetary claim is dismissed without leave to re-apply.

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: January 31, 2023

Residential Tenancy Branch