



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROLITA ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

A monetary order for damages or compensation pursuant section 67; and
Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing with a witness, BW. The landlord was represented at the hearing by counsel, AS and co-owners, SR and RR. The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*. Each party confirmed that they were not recording the hearing.

As both parties were present, service of documents was confirmed. The landlord's counsel acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package but noted that they received the tenant's evidence package on December 19th. The landlord acknowledges the evidence was served at least 14 days before the hearing and they were ready to proceed to hearing. The tenant acknowledged being served with the landlord's evidence package and had no issues with timely service.

Both parties confirmed their email addresses at the conclusion of the hearing and agreed that the final decision should be sent by email

Issue(s) to be Decided

Is the tenant entitled to compensation for a loss of quiet enjoyment of the rental unit?
Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant gave the following testimony. The tenancy began with a previous owner, GP who is the father of the landlord's representative, R.R. attending today's hearing. The property was sold to the current landlord company in 2021.

The dispute arises because of a request the tenant made in April 2021 seeking new carpeting and paint in her unit. According to the tenant, the response from the landlord was for her to do it herself or pay more in rent. When the co-landlord SR spoke to the tenant, she was told "*no painting and no carpet*" and hung up the phone. The tenant testified that she was hosting a bbq on June 3rd and was told by the landlord to get rid of the bbq which her roommate BK did. 3 days later, the tenant was told to take it out of the bin, saying they needed permission to throw it out.

Between June and August 2021, all was good and "suddenly without warning," the tenant was served with multiple notices of breaches of the tenancy agreement. This shocked the tenant because the previous owner always verbally communicated issues with her. The tenant argues that she was sent multiple letters from the landlord that she states were intimidating and threatening. The letters from the landlord's lawyers were "over the top" and false. The landlords called the police on her because she wouldn't let the painters in, however the tenant argues that she didn't want multiple people in the unit during the pandemic without wearing masks. She calls the landlord representative SR a "bully" and testified that SR had once pushed his way into her unit, date not provided.

The tenant did not provide a monetary order worksheet to establish the nature of her compensation application, but testified she wants the following:

\$2,500.00 for fuel

\$2,000.00 for restaurants while moving to their new residence 8,000 km. away

\$1,700.00 for 10 days in a hotel

\$12,000.00 for moving expenses

The remainder of the \$35,000.00 claim is for lawyers fees, anxiety, stress and a loss of enjoyment of the rental unit.

The tenant acknowledges she did not provide any receipts for the items she seeks compensation for into evidence

I note that during testimony, the tenant referred to different “chapters” in her 185 pages of evidence materials. Confusingly, the tenant’s evidence was broken up into 10 “parts” that had no correlation to the “chapters” she referred to. The 185 pages were not numerically paginated for me to follow along with her during testimony and I had to interrupt the tenant on multiple occasions to ask her to direct me to the materials she was referencing. Much of the tenant’s testimonial time was spent with the tenant directing me to her documentary material she wanted to talk about.

The tenant’s witness BW also made submissions regarding some of the landlord’s evidentiary material. This “testimony” was objected to by landlord’s counsel as this witness potentially heard other participants’ testimony before providing it, thereby tainting the witnesses’ testimony. I note that BW didn’t provide any relevant testimony and only gave submissions regarding the landlord’s evidence. Accordingly, I allowed the witnesses’ submission to stand.

The landlords counsel gave the following submissions. The parties were involved in a dispute resolution filed by the tenant in response to a 1 Month Notice to End Tenancy for Cause. The hearing was adjourned and while the reconvened hearing was pending, the tenant abandoned the rental unit at the end of February, 2022. The file number is recorded on the cover page of this decision. The landlord argues that many of the issues before me today were addressed in the previous hearing and the issues before me have already been decided by the legal doctrine of “Res Judicata”.

The tenant brought in a roommate without the landlord’s written permission and this person was causing the other tenants in the building to complain about him. The landlord provided copies of complaints they received about the tenant’s roommate. The landlord submits that the roommate intimidated the building’s residents who are mostly elderly and that the landlord had to ensure the right to quiet enjoyment of their rental

units. The landlord was within their right to notify the tenant of the roommate's behaviour and followed through with it in order to provide the tenant with sufficient notice that his behaviour breaches the tenancy agreement.

The landlord SR testified that he never told the tenant's roommate to take the bbq out of the garbage, but to take the stand off so that other tenants had room to dispose of their garbage in the bin. The roommate refused and the landlord didn't take it any further. He testified that he never pushed his way into the tenant's unit, ever. A painter and a flooring contractor were arranged to take measurements and provide quotes to do the work the tenant requested and both were intimidated and harassed by the tenant's roommate.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

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.

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

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

In this case, the tenant seeks monetary compensation as her entitlement to quiet enjoyment was allegedly breached by the landlord. I turn to section 28 of the *Act* which states:

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;
- (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];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference

In determining whether the tenant's right to quiet enjoyment has been breached, I must determine whether the tenant's ordinary and lawful enjoyment of the rental unit has been substantially interfered with as a result of the landlord's actions or inaction. It is important to note that in order to make a finding of significant interference or unreasonable disturbance, the interference or disturbance in question has to either be recurring in nature or otherwise very egregious.

Here, I find the "harassment" alleged by the tenant consists of the landlord exercising his duty to ensure the building's tenants are able to co-habit agreeably with the least amount of disturbance to others. I find that what the tenant considers to be a significant interference in her quiet enjoyment is the landlord's enforcement of the building's rules and the *Residential Tenancy Act*. I base this finding on the multiple complaints against the tenant's roommate who appears to be the cause of the complaints and the warning letters sent to the tenant. I do not find "significant interference" in the written warnings or communications sent from the landlord to the tenant. Nor do I find the landlord's actions or behaviours during the tenancy to be unreasonable or egregious in nature.

Consequently, I find the tenant has failed to provide sufficient evidence that her right to quiet enjoyment of the rental unit was breached or that she has suffered a loss due to a violation of the *Act*, regulations or tenancy agreement by the landlord (points 1 and 2 of the 4 point test).

Lastly, the tenant bases her \$35,000.00 claim on \$2,500.00 for fuel; \$2,000.00 for restaurants while moving to their new residence 8,000 km. away; \$1,700.00 for 10 days in a hotel; and \$12,000.00 for moving expenses. The remainder is made up of “lawyers fees, anxiety, stress and a loss of enjoyment of the rental unit”. The tenant did not provide any receipts or any other documentation to substantiate the claims for compensation she seeks. Point 3 of the 4 point test requires that the applicant provides verification of the actual amount required to compensate for the claimed loss. Without any documents to corroborate each of the items, it is impossible for me to verify the costs she claims. I find the tenant’s evidence supporting point 3 of the 4 point test to be insufficient.

Based on the above findings, I dismiss the tenant’s application without leave to reapply.

Conclusion

The application 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: January 17, 2023

Residential Tenancy Branch