



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, CNC, DRI, RR, LRE, OLC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes

to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary issue – Overlapping and Repeated Applications

The tenant made repeated and overlapping applications regarding the Two Month Notice to End Tenancy for Landlords Use. I have noted the other file at the top of this Decision. For absolute clarity and to avoid further applications, clarifications or corrections, the issue of the Two Month Notice to End Tenancy for Landlords use of Property dated February 11, 2022 is addressed in this Decision as both parties requested I do so. I have determined that it is best addressed in this application as this file is still active and where the original issue of ending the tenancy and this notice was filed. In addition, although all the sections applied for are listed above, as noted in the Interim Decision; the only issue left to decide is whether the tenant is entitled to a monetary order for items claimed as compensation.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as compensation for loss or damage under the Act, regulation, or tenancy agreement?

Background and Evidence

The tenant gave the following testimony. The tenant testified that the tenancy began on March 1, 2019 with the monthly rent of \$650.00 due on the first of each month. The tenant testified that when he refused to pay an illegal rent increase of \$50.00, SS started threatening him with an eviction. The tenant testified that on February 11, 2022 the landlord cut off his access to all of his electronic devices. The tenant testified that SS became very aggressive and harassing and warned him that he would lose the hearing and his home.

The tenant testified that for two and half months he had to endure the loss of internet and dealing with aggressive behaviour from the landlord and her family. The tenant testified that the landlord first gave a hand typed letter on January 6, 2022 telling him

that they wanted him to move out. When he advised them that the notice was invalid, he was served a Two Month Notice to End Tenancy for Landlords Use of Property on February 11, 2022. The tenant seeks the one month's compensation as required under the Act. The tenant also seeks compensation for loss of use for the internet and a 50 % rent reduction for the 2 ½ months he had to deal with the loss of quiet enjoyment. The tenant testified that SS was always aggressive towards him and that he would bang on his door.

SS gave the following testimony on behalf of the landlord. SS testified that the monthly rent was \$700.00 but the tenant asked for a discount when he first moved in. SS testified that the verbal agreement was to be a fifty-dollar reduction for only the first three months of the tenancy to help the tenant get on his feet. SS testified that he did not ask for a fifty dollar rent increase but wanted the tenant to honor his word and pay the full rent as they both agreed on.

SS testified that the internet was not part of the tenancy agreement at any time. SS testified that they would allow tenants to access it at no charge but was not a condition of the tenancy. SS testified that his mother is elderly and not tech savvy and became tired of dealing with technical issues in relation to the internet and ceased access it to the tenant. SS testified that the tenant is the one that has become very aggressive in the past few months. SS testified that the tenant has called the police without cause and that his mother is the one that is feeling very threatened and unsafe. SS testified that no compensation should be given for loss of quiet enjoyment as it is the tenant that is causing all the stress in the home. SS testified that the tenant moved out on his own so he shouldn't be entitled to the one months compensation.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the

damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party, the applicant must also show that they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the tenants claim and my findings as follows:

Internet

SS was very clear throughout the hearing that internet was not included in the rent and that they only offered it as an “extra luxury” at times but discontinued that practice. The tenant only provided a calculation of what internet “might have cost him” had he purchased a plan, however, he did not. In addition, the tenant has not provided sufficient evidence to show that the internet was included as part of his tenancy. The tenant has not provided sufficient evidence to satisfy the four elements listed above, accordingly; I dismiss this portion of the tenants claim.

Loss of quiet enjoyment

The tenant testified that from the time he refused to pay the extra fifty dollars a month for the rent, the landlord and her family became aggressive, harassing and threatening to the point that he felt unsafe in his room. SS testified that the tenant was the one that was aggressive and harassing by his actions and how he would call the police without justification.

It was very clear to me during the hearing that the relationship between the parties is a contentious one. The parties were cautioned about their behaviour as they each wished to engage in arguing instead of discussing the issues. Based on the documentation before me and the testimony of the parties, I find that each party was a willing and equal participant in the hostilities. The tenant has not provided sufficient evidence to support his claim for a monetary award, accordingly; I dismiss this portion of the tenants claim.

One Month Compensation \$650.00

The landlord submits that the tenancy ended by mutual agreement and therefore no compensation should be paid. The tenant submits that he is still entitled to compensation. I find that the tenancy ended by agreement based on a Two Month

Notice to End Tenancy for Landlords Use of Property. The tenant did not waive his right to compensation but rather than dispute the notice, the parties agreed to a date for him to move out. As the landlord has not compensated the tenant one month's rent as required under section 51(1) of the Act, I find that the tenant is entitled to \$650.00.

Conclusion

The tenant has established a claim for \$650.00. I grant the tenant an order under section 67 for the balance due of \$650.00. This order may be filed in the Small Claims 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 *Residential Tenancy Act*.

Dated: February 23, 2023

Residential Tenancy Branch