



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, RR, 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 July 28, 2022 (the “Application”). The Tenant applied as follows:

- For compensation for monetary loss or other money owed
- To reduce rent for repairs, services or facilities agreed upon but not provided
- For an order that the Landlords provide services or facilities required by the tenancy agreement or law
- To suspend or set conditions on the Landlords’ right to enter the rental unit
- For authorization to change the locks to the rental unit
- For an order that the Landlords comply with the *Residential Tenancy Act* (the “Act”), regulation and/or the tenancy agreement
- For reimbursement for the filing fee

This matter came before me December 19, 2022, and an Interim Decision was issued December 20, 2022. The Interim Decision should be read with this Decision. The parties appeared at the December 19th hearing. The hearing did not conclude within the one hour set. The parties agreed the matter should be decided based on the materials provided prior to the hearing and further Affidavits from witnesses. The parties submitted Affidavits from witnesses as discussed in the Interim Decision.

I have reviewed and considered the materials provided prior to the December 19th hearing, the further Affidavits as well as the testimony and submissions provided at the December 19th hearing. I will only refer to the evidence I find relevant in this Decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to reduce rent for repairs, services or facilities agreed upon but not provided?
3. Is the Tenant entitled to an order that the Landlords provide services or facilities required by the tenancy agreement or law?
4. Is the Tenant entitled to suspend or set conditions on the Landlords' right to enter the rental unit?
5. Is the Tenant entitled to authorization to change the locks to the rental unit?
6. Is the Tenant entitled to an order that the Landlords comply with the Act, regulation and/or the tenancy agreement?
7. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started March 15, 2020. Rent is \$1,400.00 per month due on the first day of each month.

The rental unit is a basement suite in a house. The Landlords live upstairs and the Tenant lives in the basement suite.

The Tenant submits as follows. The Landlords have interfered with the Tenant's right to quiet enjoyment, have failed to provide the Tenant access to laundry facilities, use the Tenant's storage area for their own storage, cause constant noise disturbances, are aggressive towards the Tenant and enter the rental unit without proper notice.

The parties were involved in a prior RTB hearing where the Arbitrator ordered the Landlords to do the following:

1. I order the landlords to remove bicycles and any other items they may have stored in the storage closet the tenant has been allowed to use during this tenancy.
2. I order that, with the exception of true emergency situations, the landlords provide at least 24 hours written authorization to access any portion of the tenant's rental suite. This request for authorization to access the tenant's rental suite must explain the reason for the requested access and the requested time, and must not be more frequent than once every 30 days as is permitted under the Act.
3. I order the landlords to refrain from vacuuming or moving furniture earlier than 8:00 a.m.
4. I order the landlord provide the tenant with full and sole access to the laundry room each Sunday commencing at 8:00 a.m. and extending until 9:00 p.m. that day. Alternatively, the landlords may choose to provide the tenant with their own key to the laundry room so as to access the laundry room on Sundays between those hours.
5. I order the landlords to the extent possible to avoid interactions with the tenant, particularly in common areas of this property.

The Tenant submits that the Landlords continue to breach the Tenant's rights.

The Tenant seeks the following orders:

- a. An Order restricting the Landlords from entering the rental unit without proper notice.

The Tenant relies on text messages between the parties to prove the entries.

- b. An Order seeking \$1,800.00 in rent reduction for denial of access to laundry facilities.

The Tenant relies on a letter from the Landlords showing they denied access to laundry.

- c. An Order that the Landlords must provide the Tenant with unrestricted and uninterrupted access to laundry facilities.

The Tenant relies on a video of the Landlords yelling at the Tenant while using laundry facilities.

- d. An Order for monetary compensation in the amount of \$22,664.68 for the Landlords' multiple breaches of the tenancy agreement.

The basis for compensation is set out in an excel spreadsheet which outlines the following issues:

- Storage of bicycles in the rental unit
- Unreasonable noises at all hours of the day
- Unauthorized entry into the rental unit
- Attempted entry into the rental unit with no letter or authorization
- Attempting to break down door where police had to be called
- Yelled at by Landlord in common areas
- Intentionally turning off security light to the rental unit for over two weeks
- Garbage dropped from deck nightly
- Attempted eviction to avoid complaints
- Landlord cutting off communication due to "harassment"
- Landlord backing car up very quickly in Tenant's direction
- Overcharging for utilities for which I am not responsible (charged 35% for Fortis, s/b 5%)

- e. An Order allowing the Tenant to change the locks to stop the Landlords from entering the rental unit.

The Tenant relies on text messages to show the Landlords enter the rental unit without notice or cause.

- f. An Order that the Landlords comply with the Act, regulation or the tenancy agreement. The Tenant seeks an open and direct line of communication and

suggests that the name of an agent be provided to allow the Tenant to effectively communicate with the Landlords.

Testimony and submissions for the Tenant about the compensation request were heard at the hearing December 19th.

The Landlords have provided written submissions authored by Legal Counsel. The Landlords submit as follows. The Tenant's claims are unfounded. The Tenant has not provided any evidence to support the allegations against the Landlords. The Landlords have complied with the orders made by the prior Arbitrator. The Landlords have removed their bicycles from the Tenant's storage area. It is the Tenant who has caused the issues in the tenancy. The Landlords deny the allegations of the Tenant. The Tenant stated in their pre-screening questionnaire for the rental unit that they have no problem with noise from upstairs. Access to laundry was not initially intended in the tenancy agreement. The Landlords have complied with the previous Arbitrator's order about the Tenant accessing laundry facilities on Sundays.

I have not outlined the Landlords' written submissions in detail because there are a number of statements in them that are contradicted by the independent objective evidence and the Landlords' own statements. Given this, I do not find the submissions helpful and do not find it necessary to detail them here. I have read the entire submissions. I have taken the Landlords to dispute every aspect of the Tenant's allegations and submissions.

Testimony and submissions for the Landlords about the compensation request were heard at the hearing December 19th.

Both parties provided extensive documentary and digital evidence. I have reviewed all of the evidence provided. This is clearly a contentious tenancy where the parties have required RTB intervention since March 22, 2021. It is clear from the materials that the parties, particularly Landlord R.C. and the Tenant, do not get along. Given the highly acrimonious relationship between the parties, I have based my decision on the independent objective evidence as well as admissions by the parties themselves. I do not find the remaining evidence compelling. The evidence I do find compelling includes letters from the Landlords to the Tenant, text messages between the parties, videos and the pre-screening questionnaire completed by the Tenant which states:

[Q.] As you will be living in a multi residential home there will be a certain amount of noise coming from above you (creaky floors and talking) and beside you in the other home. Will this be a problem for you.

[A.] I have no problem with noise from upstairs. I've been living in a downstairs suite with creaky floors for 6 years.

Analysis

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

I will address each order sought by the Tenant separately.

- a. An Order restricting the Landlords from entering the rental unit without proper notice.***
- e. An Order allowing the Tenant to change the locks to stop the Landlords from entering the rental unit.***

Section 29 of the *Act* sets out when the Landlords can enter the rental unit. Section 70(2) of the *Act* states:

(2) If satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29, the director, by order, may

- (a) authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and
- (b) prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

In the prior RTB Decision issued March 22, 2021, the Arbitrator made an order about the Landlords entering the rental unit. Despite this, I find the Landlords opened the door of the rental unit while the Tenant was away around August 04, 2021, because the text messages show this and the Landlords acknowledge this in their written submissions. I find the Landlords breached section 29 of the *Act* less than five months after being specifically ordered by the prior Arbitrator not to enter the rental unit except as outlined.

The Landlords explain the reason for this breach as being related to renovations and a request by a contractor. I find the reason for the breach to be completely frivolous. The breach indicates that the Landlords have no understanding of the Tenant's rights or their obligations under section 29 of the *Act*. Further, the breach shows a complete disregard for the Tenant's privacy, section 29 of the *Act* and the prior Arbitrator's order.

I am satisfied the Landlords are likely to enter the rental unit again contrary to section 29 of the *Act* because the Landlords did so for such a frivolous reason despite being specifically ordered to comply with section 29 of the *Act* less than five months prior. Pursuant to section 70(2) of the *Act*, I authorize the Tenant to change the locks, keys or other means of access to the rental unit. The Tenant must do this at their own cost. Further, I prohibit the Landlords from replacing the locks or obtaining keys or by other means obtaining entry into the rental unit. The Landlords can still enter the rental unit in accordance with section 29 of the *Act* and the prior Arbitrator's order and the Tenant is ordered to allow the Landlords to enter as long as they have complied with section 29 of the *Act* and the prior Arbitrator's order. Given the Landlords will no longer have keys, the Tenant is ordered to facilitate entry where the Landlords have complied with section 29 of the *Act* and the prior Arbitrator's order.

b. An Order seeking \$1,800.00 in rent reduction for denial of access to laundry facilities.

Section 65 of the *Act* allows for a rent reduction by an amount equivalent to a reduction in the value of a tenancy following a breach by a landlord.

Term 8 of the addendum to the tenancy agreement states that the Tenant will have access to laundry one day per week. The Landlords were ordered by the prior Arbitrator to provide "full and sole access" to the laundry on Sundays from 8:00 a.m. to 9:00 p.m. The text messages show access to and use of the laundry facilities has been an issue throughout this tenancy. The videos also show conflict between the parties about the laundry facilities. The November 03, 2021 letter from the Landlords to the Tenants shows that the Landlords were still using the laundry on Sundays and locking the laundry room despite the order made March 22, 2021. I find the Landlords have

breached term 8 of the addendum to the tenancy agreement and failed to comply with the prior Arbitrator's order.

I accept that a lack of consistent access to the laundry facilities for only one day per week reduces the value of this tenancy because obviously the Tenant cannot do their laundry when the Landlords are using the facilities or have locked the door.

However, I decline to reduce rent by \$1,800.00 as requested because I do not find there to be compelling evidence before me showing that this is an appropriate amount. I also find the issue with laundry is better addressed through the order made below. I do award the Tenant a nominal amount of \$100.00 for this issue in recognition that the Landlords have breached the tenancy agreement and prior Arbitrator's order.

c. An Order that the Landlords must provide the Tenant with unrestricted and uninterrupted access to laundry facilities.

Section 62(3) of the *Act* allows an arbitrator to make any order necessary to give effect to the rights, obligations and prohibitions under the *Act*, regulations or a tenancy agreement.

The prior Arbitrator ordered the Landlords to provide full and sole access to the laundry facilities on Sundays from 8:00 a.m. until 9:00 p.m. The Landlords are bound by this order.

However, given access to the laundry facilities remains an issue between the parties, as shown in the text messages, letter and videos, I order the Landlords to provide the Tenant with a key to the laundry facilities no later than March 25, 2023. I note that the laundry facilities are outside and not attached to anybody's living area and therefore the Tenant having a key should be a non-issue.

For clarity, the Landlords are not to use the laundry facilities on Sundays from 8:00 a.m. to 9:00 p.m. because the Tenant has full and **sole** access during this time. However, the Tenant is not permitted to access or use the laundry facilities other than on Sundays between 8:00 a.m. and 9:00 p.m. because this is consistent with term 8 of the addendum to the tenancy agreement. The parties can agree on a different arrangement if they wish; however, both parties must agree and the agreement must be in writing.

d. An Order for monetary compensation in the amount of \$22,664.68 for the Landlords' multiple breaches of the tenancy agreement.

The Tenant has a right to quiet enjoyment as set out in section 28 of the *Act*.

Section 7 of the *Act* addresses compensation and 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.

The Tenant provided an Excel spreadsheet listing the basis for the compensation request, the number of occurrences of the issues and the specific amounts sought. I will address each basis for compensation separately.

In relation to storage of bicycles in the rental unit, I decline to award the Tenant compensation for this issue because I am not satisfied based on the evidence provided that it resulted in \$480.00 worth of loss or damage to the Tenant.

In relation to unreasonable noises at all hours of the day, the Tenant seeks \$11,000.00 for this issue. It is clear from the videos that noise transfers easily from the upper suite to the basement suite. I find some of the videos show noise one should expect when living in a basement suite. I find the Tenant was warned through the pre-screening questionnaire that there would be noise transfer. I also find the Tenant stated they would be fine with noise transfer, which in my view lessens the Tenant's entitlement to now claim compensation for noise transfer. I find there are eight videos showing an unreasonable level of noise, unreasonable nature of noise or noise at an unreasonable time. I award the Tenant \$150.00 for each of the eight occurrences. I find this amount reasonable considering the level, nature and timing of the noise. I have considered that the noise sometimes impacts the Tenant's sleep. I have considered that the Tenant cannot do much to get away from the noise because it is coming from above the rental unit and appears to impact all areas of the rental unit. I do not find that the Tenant has proven through compelling evidence that they are entitled to more than the amount mentioned. I award the Tenant \$1,200.00 for the noise issue.

In relation to unauthorized entry into the rental unit, I find the independent objective evidence only shows this occurred once. Although I find this to be a serious breach, I find the appropriate remedy to be allowing the Tenant to change the locks. I am not satisfied based on the evidence provided that the Tenant has proven \$950.00 worth of loss or damage as a result of this issue.

In relation to attempted entry into the rental unit with no letter or authorization, I decline to award the Tenant compensation for this because there is not compelling evidence before me of this occurring.

In relation to attempts to break down door where police had to be called, I decline to award the Tenant compensation for this because there is not compelling evidence before me of this occurring.

In relation to the Tenant being yelled at by the Landlords in common areas, I accept that this has occurred a few times based on the videos provided. I find Landlord R.C. has yelled at the Tenant and I find R.C.'s behaviour inappropriate and to amount to a breach of section 28 of the *Act*. However, I find that the Tenant has contributed to the problems in this tenancy. I find the Tenant's text messages to the Landlords antagonizing. I find the Tenant is creating issues where there do not need to be issues, for example, the garbage issue which is addressed below. Further, the Tenant is shown in the videos doing things such as video recording the Landlords backing their vehicle into their parking spot. The video shows the Landlords are doing nothing wrong and yet the

Tenant is standing at their door video recording the Landlords for no reason, which clearly aggravates the situation between the parties. As well, in the videos where R.C. is yelling at the Tenant, the Tenant does not close their door or walk away, instead, the Tenant stands there video recording R.C. and engaging with R.C. The videos show R.C. is present for a reason, for example, washing their vehicle, whereas the Tenant has no reason to be standing at their door engaging with R.C. In my view, the Tenant has done little to nothing to mitigate their claimed loss. In the circumstances, I award the Tenant \$25.00 as a nominal amount to recognize that Landlord R.C. is breaching the Tenant's right to quiet enjoyment but considering the Tenant's own actions and behaviour in this tenancy which has only added to the problems between the parties.

In relation to the Landlords intentionally turning off security light to the rental unit for over two weeks, I decline to award the Tenant compensation for this because there is not compelling evidence before me showing \$200.00 worth of loss or damage in this regard.

In relation to the Landlords dropping garbage from their deck nightly, I decline to award the Tenant compensation for this because I find this to be a non-issue. I find the Tenant is creating issues where there do not need to be issues. The videos show the Landlords drop a small bag of garbage from their balcony to the ground directly in front of their vehicle after looking over the side of the balcony. Although it is not clear to me why the Landlords need to do this, I see no issue with it and do not accept that it has any impact on the Tenant whatsoever.

In relation to the attempted evictions to avoid complaints, I decline to award the Tenant compensation for this. I accept that a pattern of the Landlords issuing unsubstantiated notices to end tenancy may result in the Tenant being entitled to some compensation for this; however, I do not find two notices to end tenancy to be sufficient to be a pattern or to justify compensation.

In relation to the Landlords cutting off communication due to "harassment", I decline to award the Tenant compensation for this because the Landlords simply told the Tenant in their letter that they would not reply to frivolous communications. The Landlords have no obligation to reply to frivolous communications.

In relation to the Landlords backing their car up very quickly in the Tenant's direction, I decline to award the Tenant compensation for this because there is not compelling evidence before me of this occurring.

In relation to the Landlords overcharging for utilities, I understand the Tenant to be disputing that they should have to pay 35% of the utilities. Term 4 of the addendum to the tenancy agreement states that the Tenant will pay 35% of BC Hydro and Fortis bills and therefore the Tenant must pay 35% of these. I am not satisfied based on the submissions before me that the Tenant is entitled to compensation in this regard.

f. An Order that the Landlords comply with the Act, regulation or the tenancy agreement. The Tenant would like an open and direct line of communication and suggest the name of an agent be provided to allow the Tenant to effectively communicate with the Landlords.

I decline to order that the Landlords have an agent act for them in this tenancy. The Landlords' November 18, 2021 letter simply states that they will not respond to frivolous communications from the Tenant. The Landlords have no obligation to respond to frivolous communications from the Tenant. Further, I find the text messages and letters in evidence show that the Landlords respond to the Tenant in an appropriate manner. As well, the orders made in this Decision should reduce the necessary communications between the parties, for example in relation to laundry.

Having said the above, I do suggest that the Landlords appoint an agent in an attempt to move forward without further issues in this tenancy; however, I do not order this. I also suggest that the Tenant only interact or communicate with the Landlords when necessary to do so and in a manner that sticks to relevant facts and straightforward requests.

Summary

The Tenant is awarded \$1,325.00 as compensation for breaches by the Landlords. Given the Tenant has been partially successful in the Application, the Tenant is awarded the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct a total of \$1,425.00 from their next rent payments (i.e. \$1,400.00 from the first and \$25.00 from the second).

Conclusion

The parties must note the orders set out in the Decision.

The Tenant can deduct a total of \$1,425.00 from their next rent payments (i.e. \$1,400.00 from the first and \$25.00 from the second).

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: March 15, 2023

Residential Tenancy Branch