



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR, MNDCT, AAT, LRE, OLC, FFT**

Introduction

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

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- A monetary order for damages or compensation pursuant section 67;
- An order allowing the tenant access to the rental unit pursuant to section 30;
- An order suspending the landlord's right to enter the rental unit pursuant to section 70;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the tenant and the landlord attended the hearing. The landlord sought to be represented by his son acting as agent and I allowed this in accordance with Rule 6.7 of the Residential Tenancy Branch Rules of Procedure. Hereinafter, the landlord's agent will be referred to as the landlord.

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 was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issues 01

At the beginning of the hearing, I confirmed with both parties that the tenancy had ended. As they confirmed it had, I advised them that the tenant's application seeking to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities would be dismissed. The issue of whether tenant owed unpaid rent to the landlord was still an issue to be determined under section 55(1.1) and I advised the parties that I would hear their testimony on this issue.

The following issues would not be considered for this hearing as the parties were no longer bound by a landlord/tenant relationship.

- An order allowing the tenant access to the rental unit pursuant to section 30;
- An order suspending the landlord's right to enter the rental unit pursuant to section 70;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62;

The tenant's application seeking monetary compensation would be determined during this hearing.

Preliminary Issue 02

The landlord acknowledged service of the tenant's application for dispute resolution but stated that a second package of evidence wasn't received until after the concierge of his building notified him the tenant had left items for the landlord. The landlord acknowledged receiving the tenant's second evidence package on March 20th. I note that the tenant uploaded his second set of evidence with the Residential Tenancy Branch on March 16th and March 17th, less than 14 days prior to this hearing date of March 30th. The tenant testified that he was assured by an information officer of the Residential Tenancy Branch that he could serve the landlord with his documents by giving them to the concierge working at the landlord's building and emailing the landlord telling him it's with the concierge. The tenant also testified that he had difficulty in uploading his evidence to the Residential Tenancy Branch's website.

While section 88(b) allows a tenant to serve a landlord with a document by leaving a copy with an agent of the landlord, there is no evidence before me that the landlord had named the concierge of his residence to act as his agent to receive documents related to this dispute. As the evidence was provided to the Residential Tenancy Branch and to the landlord less than 14 days prior to the hearing, I determined that the tenant's second evidence package was late and would not be considered. Any evidence supplied to me and exchanged with the landlord by the tenant prior to March 16th was admitted.

The tenant acknowledged receiving only 10 files and a single black and white document from the landlord in his evidence package. The landlord testified that he sent his entire evidence package to the tenant via registered mail on December 14, 2022. The tracking number for the mailing is recorded on the cover page of this decision. The landlord further testified that the tenant's 45 page evidence package was the same as the one provided to me. I find that, on a balance of probabilities, it is more likely than not that the landlord served the tenant with his evidence package and any documents in the landlord's evidence package referred to will be noted in this decision.

Preliminary Issue 03

The landlord provided evidence of alleged damage to the rental unit done by the tenant. I advised the parties that this hearing was limited to the tenant's claim for compensation as only the tenant had filed an application for dispute resolution. If the landlord seeks an order for compensation, the landlord has the ability to file a dispute.

Issue(s) to be Decided

Is the landlord entitled to rent for the month of November, 2022?

Is the tenant entitled to monetary compensation?

Can the tenant recover the filing fee?

Background, Evidence and Analysis

The fixed 2 year tenancy began on December 1, 2020, set to expire on November 30, 2022. Rent was set at \$3,050.00 per month, payable on the first day of each month. The tenant gave the landlord a security deposit of \$1,525.00 and a pet damage deposit of \$1,525.00 at the commencement of the tenancy which the landlord continues to hold.

On October 27, 2022, the tenant gave the landlord notice that he will be leaving the property on November 30, 2022 before 1:00 p.m. The reason for ending the tenancy was the financial challenges he was experiencing. The tenant acknowledges he did not pay rent for the month of November although he states in the termination letter that he will pay rent at the end of November. The landlord also acknowledges that the tenant did not pay any rent for November.

The tenant testified that the landlord did not do a condition inspection report with him on move-in, or if one was done, he was not given a copy. The landlord disputes this, saying he is a realtor and knows his responsibilities under the Act. He provided a copy of the move-in condition inspection report dated November 30, 2020, signed by the tenant, to the tenant at the beginning of the tenancy.

The tenant testified that he personally served the landlord with his forwarding address on November 30, 2022. He testified that it was printed on a Residential Tenancy Branch form, but during the hearing he was unable to direct my attention to a copy he said he had uploaded for me to view. The landlord acknowledges receiving the tenant's forwarding address via email on December 1, 2022. He didn't file an application for dispute resolution to keep the security deposit or pet damage deposit because he assumed he could not counterclaim against it once the tenant had already filed his application. The landlord alleges there was damage in excess of \$3,000.00 done to the unit by the tenant but that will be determined at a later time after the landlord files an application for dispute resolution .

The landlord testified that although the tenant stated in writing that he would be gone before 1:00 p.m. on November 30 2022, the landlord agreed that they could do the move-out condition inspection report at 4:00 on that date. The tenant testified that at that date and time, the landlord came to the rental unit with his son and another person unknown to him as an intimidation and bullying tactic, trying to get the tenant to admit damage done to the unit. The landlord's son banged on his door aggressively while the tenant's cleaners were still there and he felt threatened. He needed an additional 2 hours to clean and the landlord kept telling him he's there illegally. All the while, the landlord "listened" to him through his door. Since there was no threat to kill or him or beat him up, the tenant could not seek charges against the landlord or his son.

The tenant alleges that due to the landlord and his son's aggressive behaviour, he had to call the police who advised him to avoid any confrontation with the landlord and leave. The tenant seeks \$3,050.00 as compensation from the landlord for the behaviour and due to incidents on October 11, 2022 and November 15th.

On October 11th, the tenant testified that the landlord followed him into the lobby of the building and "aggressively approached" him, asking if the tenant had something to tell the landlord. Their former "good relationship" was ending and the landlord told him things are going to change now. The landlord sought an inspection of the place in the following 24 hours. On November 15th, the tenant allowed the landlord in to show the unit to a potential new tenant and during this time, the tenant alleges the landlord videotaped him, his computer screen and personal papers in the unit which violates his privacy.

The landlord counters this, saying the landlord never harassed the tenant at any time. On the last day of the tenancy, both parties yelled at one another. The tenant was supposed to be gone by 1:00 p.m., however the landlord allowed him until 4:00 to do the condition inspection report. The landlord acknowledges knocking on the door at 4 to

do the inspection but was met with profanities and yelling from the tenant. They left and returned at 6:00 p.m. The tenant would not allow them into the unit and would not give them the keys. The landlord received the fob key from the concierge the following day because the tenant vacated the unit without participating in the condition inspection report and refused to let them in. The tenant's claims of intimidation are false and the tenant has no evidence of it.

- Blinds

The tenant seeks reimbursement of blackout blinds he paid for and left in the unit. The tenant asked the landlord if he could put them in and the landlord gave \$500.00 towards their purchase and there's an outstanding balance of \$1,300.00 the landlord owes him. The landlord points to a set of email exchanges between the parties whereby on December 21, 2021, the landlord writes that *"I cannot be involved in any contribution regarding the changing of th blinds. If you would like to, that is absolutely fine"*. December 30th, the tenant writes, *"I am in agreement to below... I will be responsible for paying for the new blinds and remotes less \$500.00 you have generously offered to pay towards the new blinds that will remain with the unit at the end of the lease"* The landlord testified that at no time did he offer to pay for the blinds.

Conclusion

- Unpaid rent for November 2022

The tenant acknowledged that he did not pay rent for the month of November, 2022, stating he withheld it due to what he perceived to be intimidating and bullying behaviour from the landlord.

The tenant filed an application to dispute the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities which was dismissed. However, pursuant to section 55(1.1), I am required to determine if the tenant owes the landlord rent for the month of November.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. I find the tenant had no right to deduct all or any portion of the rent. The tenant's perception of bad behaviour from the landlord does not give the tenant the right to withhold rent. I find the landlord is owed rent for the month of November 2022 in the amount of \$3,050.00 and I grant the landlord a monetary order in that amount.

- Blackout blinds

Although the tenant testified that he didn't "gift" the blinds to the landlord, I find the evidence of the emails sent at the end of December, 2021 clearly contradicts this. The tenant clearly states in his email that the blinds will remain in the unit at the end of the lease and that he understood the landlord would only contribute the "generous" amount of \$500.00 towards their purchase. This portion of the tenant's monetary claim is dismissed without leave to reapply.

- aggressive and unpredictable behaviour

Section 7 of the Act states: 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.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

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 4-point test]

Aggravated damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury

caused by the wrongdoer's behaviour. They are measured by the wronged person's suffering.

They must be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought. The damage award is for aggravation of the injury by the wrongdoer's highhanded conduct.

The tenant cites 3 instances where he felt he was intimidated or bullied by the landlord, all within the last 2 months of the 24 month tenancy. Although the tenant may characterize the landlord's behaviour on October 11th as aggressive when he claims the landlord "approached him aggressively", I have insufficient evidence that this was the case. The characterization of the landlord's behavior is simply that of the tenant without any corroborative testimony from an independent observer. Similarly, while the tenant may have been uncomfortable during the viewing of the unit on November 15th, I do not find the actions of the landlord are tantamount to aggression or threatening behaviour.

I have reviewed the video evidence of the encounter at 4:00 p.m. on November 30th and I do not find the landlord's behaviour to be aggressive or threatening whatsoever. I find that the landlord attended the rental unit at the agreed to date and time to conduct the move-out condition inspection report with the tenant. It appears to me that the tenant was not ready to move out at 4:00 and sought to delay the inspection until he finished cleaning it. Seeking to access the unit at the agreed to time is well within the right for the landlord to pursue. Consequently, I find the tenant has provided insufficient evidence to satisfy me the landlord has breached the Act, regulations or tenancy agreement [point 1 of the 4-point test] and I dismiss this portion of his claim.

- Security deposit and pet damage deposit

While the tenant testified that the landlord didn't conduct a move-in condition inspection report with him at the commencement of the tenancy, the landlord produced a copy of the one bearing the tenant's signature into evidence. Further, the landlord testified that a copy was provided to the tenant when the tenancy began and I accept that testimony based on a balance of probabilities and the greater probability he did so due to the landlord's occupation as a realtor and the lack of evidence to the contrary.

Based on the evidence before me, I find that the parties agreed to conduct a move-out condition inspection report at 4:00 p.m. on November 30th and that the tenant refused to allow the landlords entry. In the video, the tenant is heard saying "I don't give a F*** about 4:00... 6:00 come back". I accept that when the landlord reattended at 6:00 to

conduct the condition inspection report, the tenant was gone, giving his keys and fob to the concierge.

Section 36(1) states that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord complied with section 35 (2) [2 opportunities for inspection], and the tenant has not participated on either occasion. I find that the circumstances exist under section 36(1). The parties agreed for the condition inspection report at 4:00 p.m. on November the 30th, and it was rescheduled to 6:00 p.m. due to the tenant's unwillingness to let the landlord in. Consequently, I find the tenant's right to a return of the security deposit and pet damage deposit was extinguished for his failure to participate in the move-out condition inspection report. The landlord is entitled to retain both the security deposit and pet damage deposit pursuant to section 36(1) of the Act.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord may retain the tenant's security deposit and pet damage deposit pursuant to section 36(1) of the Act.

The landlord is awarded a monetary order for unpaid rent in the amount of **\$3,050.00**.

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: April 03, 2023

Residential Tenancy Branch