



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, PSF, LRE, OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on December 5, 2022 seeking:

- provision of services/facilities required by the tenancy agreement/law;
- suspension or set conditions on the Landlord's right to access the rental unit;
- the Landlord's compliance with the legislation and/or tenancy agreement;
- reimbursement of the Application filing fee.

On December 8 the Tenant amended their Application to add a claim for compensation for monetary loss/other money owed.

The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on April 11, 2023. In the conference call hearing I explained the process and provided the participants the opportunity to ask questions.

Despite noted difficulties identifying and working with digital files, both parties confirmed receipt of the evidence of the other. In terms of the timelines in which each party provided their evidence to the other, I notified the parties there was nothing precluding my consideration of the evidence. In terms of format, I told both parties we would do the best we could with the organization and usability of the evidence.

Issues to be Decided

- i. Is the Tenant rightfully entitled to a suspension or set conditions on the Landlord's right to access the rental unit?
- ii. Is the Landlord obligated to provide services/facilities to the Tenant, as required by the tenancy agreement/the *Act*?
- iii. Is the Landlord obligated to comply with the legislation and/or the tenancy agreement?

- iv. Is the Tenant entitled to compensation for monetary loss/other money owed, pursuant to s. 67 of the *Act*?
- v. Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement in place between the parties. The tenancy started on July 1, 2021 on a month-to-month basis. The monthly rent was \$1,995 at the start of the tenancy. As of January 1, 2023 the rent amount was \$2,034.52.

The Tenant provided a summary statement in which they described trying to set boundaries on the frequency and tone of the Landlord's communication to them. From the Tenant's perspective, the Landlord's communication involved many personal issues that were not appropriate. Over time, the Landlord started to message the Tenant with threats of eviction, for various reasons including smoking violations, renovations, and the Landlord's own use of the rental unit.

i. Landlord's right to access the rental unit

Regarding the Landlord's access to the rental unit, the Tenant presented that there was a plumbing issue that was an emergency. For this, the Landlord entered the unit while yelling, and then entered approximately 30 minutes later once again. The issue occurred on December 2; however, the issue was not resolved until December 5. Since this time the Landlord hired a property manager, and the Landlord did not enter the rental unit again.

The Landlord provided an affidavit for this hearing, and to describe the plumbing issue that necessitated their entry into the rental unit they referred to that affidavit. On the Tenant's prompting they inspected the rental unit for this issue on December 3, taking measures to deal with an overflowing water issue at that time. An acquaintance of the Landlord attended to also inspect the issue and returned the next day to fix that issue. The Landlord also hired a plumber who attended on December 5 to fully remediate; the Landlord's invoice for that work appears in their evidence,

The Landlord referred to the Tenant's video record of the incident to be too short, and not an accurate portrayal of their interaction with the Tenant due to its brevity.

On December 8, the Landlord hired a property management company to manage the rental unit. The Tenant confirmed there was, from early December onwards, a property manager in place. As of the date of this hearing, the Landlord had not re-entered the rental unit.

ii. Landlord's provision of services/facilities

The tenancy agreement shows that internet service is not provided in the monthly rent.

The Tenant described how their internet access was cut off from January 26 to January 28, 2022, as well as the following week on Saturday. The Tenant arrived home and their own child informed them that the internet had cut off. An internet provider technician attended and notified the Tenant that the connection was unscrewed at the portal point on the outside of the rental unit property. The technician replaced the cable and secured it with a zip tie; however, one week later the zip tie was cut, and the cable was unscrewed again. The Tenant provided a video to show this.

The Tenant was aware that the Landlord's children had unscrewed the internet connection to them. They reiterated that they pay for their own internet separately from any connection of the Landlord. In the hearing, the Tenant acknowledged that this was not precisely an issue of the Landlord not providing a service/facility under the tenancy agreement.

The Tenant described not having any repeat incidents of this kind, due to the Landlord's children's observation of the Tenant filming them.

In their affidavit, the Landlord described their children attempting to reconnect the internet at that time because "there was no internet."

iii. Landlord's compliance with the tenancy agreement/Act

On their Application, the Tenant listed the Landlord's "constant" harassment, and cited a decline in their own mental health as a result of this behaviour by the Landlord. The Tenant described being on medication for anxiety, and seeking counselling since December 2022, as a result of this tenancy and the issues the Landlord has presented them with throughout.

In their written description they prepared for this hearing, they listed incidents involving a guest's smoking in the area of the rental unit property, a guest who stayed short-term and maintained the rental unit while the Tenant was out of town (later to be accused by the Landlord as having another Tenant living in the rental unit), the Landlord's own communication in their separate unit that is above the rental unit, and the urgent plumbing issue from early December.

The Tenant provided text messages that show the communication from the Landlord they are referring to throughout that encompasses each of the issues set out above. The Tenant also provided video that depicts incidents of inappropriate communication that involves the Tenant and their guests.

In their affidavit, the Landlord provided rebuttals to each of the incidents described by the Tenant in their submission, those of May 30, August 20, September 12, and the plumbing incident in early December 2022. The Landlord also submitted that the incident in question were mere issues of

temporary discomfort as set out in the *Residential Tenancy Policy Guidelines*, in particular 6: *Entitlement to Quiet Enjoyment*.

In the hearing, the Landlord described 6 separate incidents in 7 months, just in terms of a number of issues that have caused conflict and tension. They reiterated that their entry into the rental unit in early December was necessitated by the urgent nature of the plumbing issue. They submitted their messaging to the Tenant was solely focused on issues involving the tenancy.

For guidance on what constitutes 'harassment' they provided a separate Residential Tenancy Branch decision that is illustrative of the principle. That is a pattern in which a landlord contacted a tenant "excessively" and "continually showed up at the rental unit". The Landlord submits there is a lack of documentary evidence presented by the Tenant to show any pattern of harassment.

iv. compensation for monetary loss/other money owed

Within days of making their Application, the Tenant amended it to include a monetary claim. This amount is \$5,000. In the hearing, the Tenant described this amount "as a part of rent", meaning they are requesting compensation in the form of reduced rent. This was for the "various amounts of texts, cornered guests, [and] mental and emotional stress." They described specifying this amount based on the number of disturbances.

The Landlord in response set out the principles that govern a party's claim for compensation, as set out in the *Residential Tenancy Policy Guidelines*. They state plainly there is no evidence to show the Tenant's anxiety and need for counselling, as well as proof of the value sought by the Tenant.

Analysis

i. Landlord's right to access the rental unit

A landlord's right to enter a rental unit is governed by s. 29 of the *Act*. Basically, this sets out that a landlord must not enter, unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

- (c)the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d)the landlord has an order of the director authorizing the entry;
- (e)the tenant has abandoned the rental unit;
- (f)an emergency exists and the entry is necessary to protect life or property.

I also note the *Act* allows for a landlord's monthly inspection, given they provide notice in line with s. 29(1)(b) set out above.

I find both parties confirmed there was a single incident of an urgent nature that prompted the Landlord's entry into the rental unit on December 3, 2022. I find it more likely than not this was at the Tenant's own urging. Given the difficult communication pattern between the parties, the Landlord's entry proved to be a tense encounter.

Both parties confirmed a property manager is now in place, as of the date of the hearing. I accept the Tenant's statement that the Landlord has no longer entered the rental unit to be fact.

I trust the property managers are familiar with the tenets of the *Act* governing a landlord's entry, and the notice that is normally required. The tenancy agreement in place between the parties contains a provision that mirrors that in place in the *Act*.

Based on the actual incident, and parties' confirmation that a property manager is in place, I find there is no need for specific measures either suspending or otherwise restricting the Landlord's entry into the rental unit. The property manager must adhere to s. 29 of the *Act*. As stated, I am confident they are aware of this provision.

On this particular issue stemming from December 3, 2022, I dismiss this piece of the Tenant's Application without leave to reapply.

ii. *Landlord's provision of services/facilities*

The Act s. 27 sets out that a landlord must not restrict or terminate a service or facility if it is essential to the Tenant's use of the rental unit, or it is a material term of the tenancy agreement.

As the Tenant acknowledged in the hearing, they pay for internet separately and have a separate agreement with their internet provider.

I find the Act s. 27 does not apply to this situation as the Tenant acknowledged in the hearing. Moreover, the incident was a single instance, with the Landlord's children making an error by disconnecting the Tenant's internet. I find that, more likely than not, this was not deliberate on the

part of the Landlord's children, minus any evidence from the Tenant showing that clearly. It is difficult to understand this as an act of harassment or other direct action by the Landlord, given the reasonable explanation proffered by the Landlord in their evidence and statements in the hearing.

I find s. 27 does not apply to this situation; therefore, I make no separate order for the Landlord to provide services/facilities. I dismiss this piece of the Tenant's Application without leave to reapply.

iii. Landlord's compliance with the tenancy agreement/Act

Unfortunately, there is in place between the parties a cycle of accusatory and argumentative communication. This is evident in the samples provided by each party for this hearing.

In order to qualify as "harassment" there must be something more than tense interactions. One party would have to identify behaviour that qualifies as harassment, be able to show their identification of that behaviour specifically as harassment/bullying to the offending party, with the offending party then not acknowledging or ending that behaviour after being notified of that.

I do not attempt to resolve each incident between the parties or make any determination on who was "right" in any of those situations. Neither party seemed able to break the cycle of communication in place.

I find there was not a breach of the Tenant's right to quiet enjoyment of the rental unit overall because of this. I find the Tenant was equally accountable for continuing the communication via text, in a pattern of messaging that carried over into tense in-person interactions. The Tenant described the issues as affecting their health overall and that is certainly an ill-effect; however, the Tenant did not present that they attempted to end communication by suggesting something different and their request remained unheeded by the Landlord.

I find the Landlord acknowledged, in a way, that things were not working when they hired a property manager to assist with things going forward. I trust this should alleviate the need for constant communication between the parties via text, which must end in the interest of both the Tenant's and the Landlord's well-being. As much as possible, the parties must avoid each other at the rental unit property, and the communication must remain confined to that between the Tenant and the property manager going forward. I trust the property manager will be fully aware and compliant with the relevant portions of the *Act*, the tenancy agreement in place between the parties, and practical concepts outlined in the *Residential Tenancy Policy Guidelines*.

I make no specific order to the Landlord to abide with the principles of quiet enjoyment. I find the concept is known to them, and they are aware of its impact and what can arise from violations.

The Tenant also must recognize that they are equally responsible for engaging in the damaging pattern of communication. Should the Tenant feel the Landlord is breaching their right to quiet

enjoyment, they must show that they separated themselves from this pattern of communication fully, yet the Landlord continued to violate this right despite being asked not to. As well, the Tenant would have to fully illustrate the impact to them in terms of physical or mental ill effects.

iv. compensation for monetary loss/other money owed

A party that makes an application for compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

- i. That a damage or loss exists;
- ii. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- iii. The value of the damage or loss; **and**
- iv. Steps taken, if any, to mitigate the damage or loss.

As above, I find there was no one-way pattern of bullying or harassment in place. I find the Tenant was equally engaging in the communication that did not end until it became overwhelming in its impact. With the parties feeling the need to record practically every interaction on video, that certainly exacerbates the situation and can be very intimidating in a tense situation.

The impact of behaviour that can be labelled as bullying or harassment is not proven. There is no evidence showing the impact on mental or physical well-being. This is far short of the onus which the Tenant must overcome to show definitively that events stemming from the actions of the Landlord have negatively affected health and/or wellbeing.

I compare what was presented by both parties in this hearing to what would normally constitute evidence of bullying or harassment: that is, direct evidence proving the Landlord confronted the Tenant or spoke to them inappropriately or otherwise intentionally caused distress. Such evidence is not present here. Most importantly, I find the Tenant did not mitigate the damage by definitively breaking the cycle of communication and ending the harsh messaging.

For the reasons above, I dismiss the Tenant's claim for compensation in its entirety.

v. compensation for monetary loss/other money owed

The Tenant correctly brought matters to the Residential Tenancy Branch for resolution in this tense situation. In this situation it was appropriate to review the principles involved and set out a practical application to the situation.

I trust going forward that the communication between the parties will be focused and civil, via the property manager.

I find the Tenant was not successful in this Application, even though I agree at this stage it was necessary. With this in mind, I grant the Tenant reimbursement of their Application filing fee. I authorize the Tenant to deduct \$100 from their next upcoming rent payment.

Conclusion

For the reasons above, I dismiss the Tenant's Application. I note the principles set out above apply going forward, and the Tenant is not precluded from reapplying for relief via the Residential Tenancy Branch should they honestly feel the problems have not alleviated. I urge them to consult with the Residential Tenancy Branch or other tenant advocacy groups for assistance when necessary.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 12, 2023

Residential Tenancy Branch