



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, MNDCT, RR, RP, LRE, OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on May 2, 2023 seeking the following:

- A. to dispute a One Month Notice to End Tenancy for cause (the “One-Month Notice”);
- B. compensation for monetary loss/other money owed;
- C. reduction in rent for repairs, services or facilities agreed upon but not provided
- D. repairs made to the rental unit/property, after contacting the Landlord in writing with no completion;
- E. suspension/set conditions on the Landlord’s right to enter the rental unit
- F. the Landlord’s compliance with the legislation/tenancy agreement
- G. reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 21 and August 23, 2023.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matter – Tenant’s service of evidence

Though the Landlord raised the issue of only receiving the Notice of Dispute Resolution Proceeding merely by chance because of a particular address omission, I find as fact that for the purposes of this Application, the Notice of Dispute Resolution Proceeding was served in a manner complying with the *Act*.

The Landlord confirmed they received the Notice of Dispute Resolution Proceeding associated with this hearing via email from the Tenant.

During the hearing the Landlord stated they did not receive individual pieces of the Tenant's evidence that the Tenant referred to in the hearing. At my request the Landlord forwarded the two separate emails from the Tenant dated August 7, attaching the following: a letter from a plumber; text message examples; tenancy agreement; psychologist letter and copy of a note (dated August 6, 2023) advising of the Tenant initiating a human rights tribunal case.

The Tenant provided other evidence to the Residential Tenancy Branch; however, I am not considering these in this decision because there is no proof the Tenant provided these items to the Landlord as required by the *Residential Tenancy Branch Rules of Procedure*.

Because the Tenant confirmed they received all evidence from the Landlord in this matter, I consider all of the Landlord's material as they provided to the Residential Tenancy Branch on August 14, 2023.

Issues to be Decided

A. Is the Tenant entitled to a cancellation of the One-Month Notice?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an order of possession in line with the One-Month Notice?

B. Is the Tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

C. Is the Tenant entitled to a reduction in rent for repairs not completed?

D. Is the Landlord obligated to repair the rental unit/property, as per the Tenant's previous request?

E. Is the Landlord's access suspended or subject to set conditions?

F. Is the Landlord obligated to comply with the *Act* and/or tenancy agreement?

G. Is the Tenant entitled to reimbursement of the Application filing fee?

Background and Evidence

In the hearing, the parties confirmed the basic details of the tenancy agreement they had in place, as provided by each party in their evidence. This shows that the tenancy started on October 11, 2020, reverting to a month-to-month agreement after the first year. The rent amount is set at \$6,500 payable on the first of each month. The Tenant paid a security deposit of \$3,250.

An addendum appears in the Landlord's evidence. This provides for the Landlord themselves maintaining and taking care of the lawn, yard, and pool. The clause allows for the Landlord to hire a gardener/pool maintenance for these purposes, if necessary to "bring the above noted items back to its normal state and charge the Tenant, then payment of such a charge is considered nonpayment of rent." The Landlord's notation on the addendum is: "Tenants agree to maintain the garden & the pool (\$250/month)". The Landlord and the Tenant both signed this addendum on October 11, 2020.

At the commencement of the reconvened hearing on August 23, the Landlord reviewed the situation with yard/pool maintenance. The arrangement was (as set out in the addendum) that the Landlord would pay a third party for yard/pool work; however, the Tenant at the start of the tenancy wanted \$250 per month on this waived, agreeing to do these tasks themselves. The agreement was that the Landlord would deduct \$250 from each month's utilities, in effect giving this back to the Tenant.

The Landlord wrote of this arrangement on page 9 of their August 14, 2023 submission:

The Tenant had requested the Landlord pay the Tenant \$250 per month, to maintain the pool and garden. This request was made as the Landlord had previously arranged for a third party to complete the maintenance. This is reflected under the Tenancy Agreement.

A. the One-Month Notice

On the Application, the Tenant provided the date of April 26, 2023 as the date they received the One-Month Notice from the Landlord. In the hearing the Landlord provided that they served this document attached to the door of the rental unit, and emailed; both these indications are on page 3 of the document.

This One-Month Notice set the end-of-tenancy date for May 31, 2023.

The Landlord indicated the following two reasons on page 2:

- Tenant has allowed an unreasonable number of occupants in the unit . . .
- Tenant has assigned or sublet the rental unit . . . without landlord's written consent.

The Landlord provided more details on page 2 of specific reasons they sought to end the tenancy. The Landlord elaborated on each particular reason in their written submission.

The Landlord in the hearing stated that the hard copy they attached to the door of the rental unit "had a signature on there." In the hearing, the Landlord acknowledged the copy in the evidence was unsigned. The Tenant stated that their copy did not have a signature.

B. Tenant's claim for monetary loss/other money owed

In this part of the Application, the Tenant set out the amount of \$13,500. They listed: 2 months rent while living in non-peaceful conditions; and \$250 payment I made under written agreement for services.

In the hearing, the Tenant set out this was the equivalent of two months' rent they went without repairs in the rental unit. They also cited the Landlord's "stalking and harassment" in the hearing. On this, the Tenant drew my attention to the letters they provided from tradespeople that address the need for repairs in the rental unit, and evidence in the form of text messages showing that the Landlord was aware of needed repairs. The Tenant also described having pictures of things (*i.e.*, personal property items) missing and pictures of the Landlord present in the rental unit when the Tenant was not there.

For the \$250 portion of this claim, the Tenant stated this was amount they paid. This was because the Landlord did not send anyone to maintain the pool as set out in the original agreement.

The Landlord responded to say they were surprised to hear about the charges or stalking and harassment, with more recent communication entirely made through counsel.

In their written submission, the Landlord also set out the following:

- they were not aware of "non-peaceful conditions" at the rental unit
- they were not aware of any \$250 payment made, re-stating the addendum in the tenancy agreement

- from a prior concern from the neighbour, the Landlord followed up with the Tenant in April 2023 to request that the Tenant complete the maintenance work as required
- the Tenant requested that the Landlord resume the task of maintenance as required, meaning the Tenant had been accepting \$250 per month, without performing the work
- by May 2023 the Tenant “appeared to have brought the property up to a reasonable standard and the Landlord resumed the garden maintenance but does not have access to the pool maintenance which is located in the basement”.

C. reduction in rent

On the Application, the Tenant provided the amount of \$2,500. To describe this part of their Application, the Tenant wrote: “I paid an extra \$250 for repairs or service April 1st and [the Landlord] refused to communicate deliver since.”

The Tenant in the hearing described the amount of \$250 as money they paid for maintenance services, set out in the compensation portion above. The Tenant did not describe what the \$2,500 amount on their Application was about.

In their written response, the Landlord stated they were unaware of any service/repairs that the Tenant paid for. In their exhibit evidence, the Landlord reproduced their dialogue with the plumber that the Tenant identified by full name in that plumber’s letter to the Landlord in the Tenant’s evidence. The Landlord submits this text message from that plumber (“no I didn’t write it – [The] Tenant did”) confirms that this plumber did not raise issues of disrepair, and did not charge the Tenant for repairs.

D. repairs

On their Application, the Tenant listed: “Plumbing/Pump/Sanitation”. They presented the letter, apparently written by a plumber, that the said plumber previously addressed to the Landlord. As set out above, the Landlord presented their own text messages to this plumber who stated they did not author the letter referenced.

In the hearing, the Tenant described no working hot water in all of the bathrooms at the rental unit. Their friend, who is a plumber, repairs this “out of compassion”.

The Landlord in their written submission set out they were not aware of any “plumbing/pump/sanitation” repair required. They followed up with the Tenant on this “numerous times” and did not receive details from the Tenant. The Landlord inspected the

rental unit on May 12, 2023 and did not observe any need for repair in any of the categories the Tenant listed.

In the hearing, the Landlord stated that they always followed up with the Tenant on any requests for repairs, citing their pride in the ownership of this rental unit property. At the time of the Landlord's inspection, the Tenant stated that repairs were previously completed.

E. suspend/set conditions on the Landlord's right to enter

On the Application, the Tenant set out: "Landlord sent family member to intimidate my guests and myself."

The Tenant in the hearing only described their Application before a human rights tribunal regarding the Landlord's conduct. In the description of that separate matter the Tenant set out "allegations of discrimination and retaliatory eviction by a landlord". This sets out that the "victim" is "currently under protection due to safety concerns".

In their written response, the Landlord set out that "the Landlord never sent a family member to intimidate the Tenant nor any guests. . ." They submit the Tenant makes this allegation without any basis.

The Landlord set out that correspondence go to their counsel. The Landlord had a prior scheduled inspection visit at the rental unit on May 12, 2023 which the Tenant attended.

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

On the Application, the Tenant listed "Major issue with plumbing that the landlord refused to comply. Not allowing for peaceful and sanitary living environment. Plumbing/water/issue."

The Tenant did not provide detail specifically on this piece of their Application. In their evidence, the Tenant provided miscellaneous text messages to show that "Landlord and . . . relative show how [the Landlord] ignores others' rights and freedom." The Tenant's notation on each message is as follows:

- Landlord neglected repairing the plumbing
- their intention was to sell the house but gave the tenants wrong eviction notice
- breaking into my mailbox to take my mail
- I tried to reason with the landlord but they refused to communicate

- The Landlord tried to sell the house when he had a tenancy agreement with [the] tenants, then he began.. retaliatory eviction with false allegations.

In their written submission, the Landlord asserted that they continue to comply with the *Act* and the tenancy agreement. They elsewhere in their submission responded to the Tenant's allegation of issues with lack of repairs.

G. reimbursement of the Application filing fee

In their written response, the Landlord submits they should not be responsible for this. The Tenant "has made several harmful, irrelevant and false accusations about the Landlord and the Landlord's family, and has committed several material breaches under the tenancy agreement."

Analysis

A. the One-Month Notice

The Landlord provided a copy of the One-Month Notice in the evidence; however, this copy was unsigned. The Landlord did not provide a copy of a signed One-Month Notice; however in the hearing they stated that the copy attached to the Tenant's door was signed.

The *Act* s. 52 provides that a notice to end tenancy must be in writing and must contain the essential elements. These are: a date and signature, the rental unit address, and the effective date of the notice.

Given the differing account of the Landlord, and that of the Tenant, as to whether the copy attached to the rental unit door was signed by the Landlord, I find I cannot verify the Landlord's statement that the copy was signed. The burden of proof in this matter is on the Landlord, and the Landlord did not provide sufficient evidence to show the document was signed as required by s. 52 of the *Act*.

In this matter, the Landlord did not meet the burden of proof to show the One-Month Notice is valid; therefore, I cancel the One-Month Notice issued by the Landlord. It is of no legal effect; the tenancy will not end for this reason. There is no order of possession to the Landlord.

B. Tenant's claim for monetary loss/other money owed

Under the *Act* s. 7, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

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

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

The Tenant on this Application simply did not provide enough information or evidence to support their claim for a full two months of rent as compensation. I find their description of “non-peaceful conditions” is vague and is dissimilar from the words ‘stalking’ and ‘harassment’ the Tenant utilizes here, without proof. I find these are convenient terms for the Tenant to use without proof thereof, and this part of the Tenant’s Application is merely in retaliation for the Landlord serving the One-Month Notice, and other disagreements the parties may have.

The Tenant did not provide sufficient proof of an impact on the quiet enjoyment of this tenancy to the extent that the Landlord infringed upon their right to quiet enjoyment. I find there was no reduction in the value of this tenancy through the Landlord’s negligent actions, either intended or not intended. With this lack of proof, I find the Tenant cannot prove that any damage or loss results from any violation of the *Act* or tenancy agreement by the Landlord.

On this part of the Application, the onus of proof was on the Tenant, and they did not describe the situation in sufficient detail such that an award for compensation would be warranted. I dismiss the Tenant’s claim for two months’ rent as compensation in its entirety, without leave to reapply.

The Tenant did not provide proof of a payment of \$250 they made for pool service, or any other kind of service. That would be basic proof of the value of the damage or loss. On this smaller piece, the Tenant was also vague, and their testimony was not fulsome enough to

overcome the burden of proof. I grant no compensation for this piece of the Tenant's Application and dismiss it without leave to reapply.

C. reduction in rent

As above, I find the Tenant did not substantiate their claim for compensation in the form of rent reduction. I find they did not make any submissions or statements in the hearing relating to how the value of the tenancy has been reduced through the Landlord's action or inaction. The Tenant was vague in describing the need for repairs, and did not present clearly that they paid for repairs that remain unaddressed by the Landlord.

I find the Landlord's evidence showing that they communicated with the plumber (that the Tenant named in a letter from a "professional plumber") who presented there is no obvious need for repairs.

I find this piece of the Tenant's Application is also made in retaliation for the Landlord's service of the One-Month Notice, and really is illogical and unsubstantiated.

D. repairs

As above, the Tenant did not provide sufficient evidence of the need for repairs. I find as fact that the Tenant stated to the Landlord that repairs were completed when the Landlord made an in-person inspection at the rental unit in May 2023. I make this finding on my assessment of the Tenant's overall credibility which I find lacking on all aspects of their Application for this hearing.

If there were repairs needed in the rental unit at any time, the Tenant did not provide sufficient proof thereof. The single letter from the plumber that the Tenant presented for this hearing has been sufficiently set out by the Landlord to be a fake letter entirely. The other pieces that the Tenant prepared for this category were not disclosed to the Landlord and do not receive my consideration.

I dismiss this piece of the Tenant's Application, without leave to reapply.

E. suspend/set conditions on the Landlord's right to enter

I find the basis for this piece of the Tenant's Application centres on their allegation of harassment and stalking by the Landlord. The Tenant did not present any instance of the Landlord attending the rental unit without prior notice or the Tenant's consent.

By s. 29 of the *Act*, a landlord's right to enter the rental unit is restricted. By s. 70 of the *Act*, an arbitrator may suspend or set conditions on a landlord's right to enter.

I am not satisfied that the Landlord has entered, or is likely to enter, the rental unit other than as authorized under s. 29.

Without any proof or evidence of unauthorized entry by the Landlord, I dismiss this piece of the Tenant's Application, without leave to reapply. I am satisfied, based on the measured approach this Landlord is taking with all matters of communication with the Tenant, as well as the Tenant's lack of credibility throughout, that the Landlord will not enter the rental unit without authorization as set out in s. 29 of the *Act*.

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

As above, I dismiss this piece of the Tenant's Application for lack of full particulars. I find the text messages in and of themselves do not reveal any breach of the *Act* or tenancy agreement by the Landlord as the Tenant charged in this Application. There was no evidence of communication from the Tenant to the Landlord advising of such.

As above, given the difficult communication between the Landlord and the Tenant here, I find it unlikely that the Landlord outright violated the *Act* or the tenancy agreement wantonly or intentionally, given that all communication is to proceed through their counsel at this point. Further, I find the Tenant indicated this issue on their Application without evidence and utilized this to set out further complaints against the Landlord, ones that I find in totality are without basis in reality.

G. reimbursement of the Application filing fee

I find the Tenant raised a number of allegations in this Application on issues that have no basis in reality. The Landlord provided the best response they could to each baseless allegation presented by the Tenant. The Tenant was not successful in the majority of their Application; therefore, I grant no reimbursement of the Application filing fee.

Conclusion

I order the One-Month Notice served by the Landlord on April 26, 2023 is cancelled and the tenancy shall continue.

I dismiss all other pieces of the Tenant's Application, without leave to reapply. The Tenant was not successful on the majority of this Application; therefore, I find they are not entitled to reimbursement of the Application filing fee.

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: September 1, 2023

Residential Tenancy Branch