

DECISION

Introduction

This hearing was reconvened from a hearing on December 12, 2023 regarding the Tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act").

An interim decision was issued on December 12, 2023. This decision should be read together with the interim decision.

The remaining claims in this application to be addressed are the Tenant's claims for:

- compensation of \$20,700.00 for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act;
- authorization to recover the filing fee for this application from the Landlords pursuant to section 72 of the Act.

The Tenant and the Landlords attended this reconvened hearing and gave affirmed testimony.

Issues to be Decided

Is the Tenant entitled to compensation for damage or loss under the Act, regulation, or tenancy agreement?

Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the accepted evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental unit is a side suite in a house. The Landlords live in the main suite. This tenancy commenced on December 15, 2020 and ended in November 2023. Rent was \$1,167.00 per month at the time that the tenancy ended, which the Tenant would round up to \$1,170.00 per month. The Tenant paid a security deposit of \$575.00.

The Landlords obtained an order of possession of the rental unit dated November 28, 2023, by way of a direct request proceeding based on an undisputed 10 day notice to end tenancy for unpaid rent (file number referenced on the cover page of this decision).

The Tenant seeks compensation as follows:

Item	Amount
Paint	\$150.00
Changing Locks	\$150.00
Compensation for lack of good faith, intimidation, harassment, coercion, psychological and emotional abuse, bullying behaviour, assault, and injury to right shoulder (12 times the monthly rent)	\$20,400.00
Filing Fee	\$100.00
Total	\$20,800.00

The Tenant gave the following testimony and evidence:

- On July 24, 2023, the Landlords came to the rental unit for a plumbing issue, which they had done on previous occasions. The Landlords would give the Tenant indications that she had done something wrong. This time, the Landlords were putting the Tenant down and suggesting that she had done something to the toilet. Landlord PT became aggressive and was pointing his finger in the Tenant's face. The Tenant was unable to walk away as they were in the Tenant's own space, and the Tenant really felt the need to close her front door. When the Tenant tried to close the door, PT pushed back. PT used force which caused the Tenant to stumble back. The Tenant had to regain her balance and use both arms to secure the door, one hand on the deadbolt and the other on the door knob. Without feeling the pain at the time, the Tenant just pushed and pushed using the full weight of her hand, arm, and shoulder to close the door. The Tenant heard Landlord NT tell PT "that's enough now", and PT released the door.
- The Tenant is single and retired. The Tenant was emotionally upset by what had happened and called a friend who came right away. The Landlords recorded a part of this interaction but did not provide the whole video. The Tenant was emotionally traumatized by this situation. The Tenant felt violated and injured. The Tenant had injured her right shoulder the year before, which had healed. The struggle at the door and PT's aggressive behaviour caused an injury to the Tenant's right shoulder, which was swollen and sore. The Tenant consulted her chiropractor and family doctor. The Tenant sought advice from various individuals about the incident and gave a statement to the RCMP.
- NT later told the Tenant that PT was using his foot, not his body, to keep the door open. This was not possible as PT's foot would have been crushed due to the gap between the landing and the entrance into the rental unit. The Tenant

submitted pictures into evidence. The Tenant denied that she was trying to close the door on PT's face. The Landlords did not have the right to force their way into the rental unit. The Landlords breached the Act by intimidating, harassing, and injuring the Tenant and forcing their way into the rental unit.

- On July 29, 2023, the Tenant received a two month notice to end tenancy for landlord's use of property from the Landlords. The Tenant did not think that this notice was given in good faith.
- The Tenant changed the locks to the rental unit on the advice of the RCMP. After the Landlords violated the Tenant's trust, the Tenant was looking out of her window every night when she heard a noise. The Tenant has personal experience that when people in her life are not acting properly, it is dangerous. The Tenant was on alert to make sure that she was safe.
- The Landlords tried to enter the rental unit on August 27, 2023. The Tenant had a friend who was going to housesit while the Tenant was away. The Tenant's friend provided an email statement indicating that the lower lock was found locked on August 30, 2023, even though the Tenant had only locked the upper lock on August 25, 2023.
- In summer 2022, the Tenant had asked PT about painting the rental unit. PT may not remember it, but his response was that the Tenant could paint as long as she did not paint the floor. It took the Tenant two years to get unpacked in the rental unit as she had several operations. The Tenant was just unpacking when the Landlords asked the Tenant to move. The Tenant had started to paint when received the Landlord's notice to end tenancy. The Tenant left behind 3 cans of paint for the Landlords to finish painting. The Tenant claims the cost of the paint at \$50.00 per can. The Tenant did not vandalize the unit. The Tenant stopped painting because the Tenant received the Landlords' notification to leave the property.
- The Tenant went blueberry picking on July 25, 2023 but was using one arm as the other one was damaged and sore. In November 2023, the Tenant did drumming rituals in the rental unit due to negative energy at the property.

The Landlords gave the following testimony and evidence:

- The incident that the Tenant refers to took place on July 23, 2023. The Landlords have a Home Depot receipt for the plumbing part that they purchased with the date. On that day, the Tenant had reported that the toilet tank was not filling up. The Landlords went to her suite and found the toilet flapper had a leakage. PT removed the part. PT mentioned to NT that he did not remember replacing the part before. Previously, PT had replaced the toilet tank float. The Tenant misunderstood and became defensive, screaming that "you are the only one that changed it [PT], I didn't. You lie". PT asked if the Tenant was calling him a liar, to which the Tenant said yes. There was some back and forth about who was lying. The Tenant made 2 to 3 quick steps forward with both hands raised motioning to slam the door. PT was standing on top of the threshold of the door holding a few tools on one hand. To stop the door from hitting him, PT set his left foot forward and held the door with his free hand. Afterwards, the Tenant called a friend to come, and asked if the Landlords would agree to meet. The Tenant's friend was

telling the Tenant to calm down and to not make a big deal out of nothing. The Tenant's friend told the Tenant that she was in a heightened state of anxiety over things that were out of the Tenant's control in the Tenant and her children's lives. The Landlords could tell that the Tenant was upset about her friend not siding with her, but instead lecturing her. The Landlords recorded part of the conversation and submitted the recording into evidence. The Landlords excused themselves and went to purchase the plumbing part.

- On July 25, 2023, the Tenant went blueberry picking. The Tenant texted NT that she had left a container of blueberries on the bench of the front entrance. The Landlords felt that this was a sign the Tenant realized she had been at fault and was apologizing. The Landlords are surprised why and how the Tenant would have done this if she felt that she was violated, unsafe, and had injured her shoulder.
- The Landlords' intention to use the rental unit was already pre-planned. The Landlords gave the Tenant 3 months' notice instead of the 2 months as required. The Landlords' youngest grandchild was starting pre-school, and his mother was returning to a full-time job. The Landlords will be looking after the grandchildren when they are unable to attend daycare if they get sick. The kids are not allowed to attend daycare even if they just have a runny nose. The Landlords' suite is not child-proof, so having the rental unit is the best solution for the Landlords to set it up with their grandchildren's toys. After giving the notice to the Tenant, NT had a heartfelt conversation with the Tenant to explain the reasons on August 5, 2023. The Tenant hugged NT and texted her to thank her. The Landlords submitted a screenshot of this text message into evidence.
- In September 2023, the Tenant started exhibiting behaviours of paranoia. The Tenant falsely accused the Landlords of entering the rental unit and talking to the neighbour about the Tenant. In November 2023, the Tenant was doing a drumming ritual in the rental unit and was screaming at the top of her lungs during the day and night. The Landlords provided an audio recording into evidence. The Tenant also verbally harassed the Landlords.
- The Tenant's claim that the Landlords had entered the rental unit is not true. There were only two keys to the rental unit. The Landlords gave the Tenant one key and NT had the other key. NT was out of the country for 6 days and did not return home until August 31, 2023. PT could not have used the key to access the rental unit. In any event, the Landlords had no intention to enter the rental unit without the Tenant's knowledge. If the Landlords needed to inspect the rental unit, the Landlords could have given a 24-hour notice, which the Tenant could not have denied. The Tenant broke the tenancy agreement by changing the locks without consent from the Landlords in writing or an arbitrator's order. There was no reason for the Tenant to change the locks.
- The Tenant's claim for \$20,400.00 is more than 12 times the monthly rent. The Tenant probably calculated $\$1,700.00 \times 12$ by mistake. There is no basis for any compensation as it was the Tenant who bullied and harassed the Landlords.
- The rental unit had been painted prior to the Tenant moving in. The Landlords did not agree for the Tenant to paint. The Tenant used a dark colour which made the rental unit feel like a cave. The Landlords would not have agreed to this colour.

After the Tenant vacated and the Landlords had a locksmith open the door, the Landlords found that the Tenant had started painting multiple rooms without finishing a room. The Landlords felt that the Tenant's actions were intentional to cause damage.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Is the Tenant entitled to compensation for damage or loss under the Act, regulation, or tenancy agreement?

Section 67 of the Act states that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

As stated in Residential Tenancy Policy Guideline 16, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

I will address each of the Tenant's claims below.

a. Paint

I do not find the Landlords to have agreed to pay for the Tenant's cost to paint the rental unit. I find there is insufficient evidence that the Landlords had given the Tenant permission to paint at all.

I find the Tenant disputed the two month notice to end tenancy issued by the Landlords, which was suspended until the hearing. However, I find this tenancy was ended before the hearing by way of an undisputed 10 day notice to end tenancy for unpaid rent.

I accept the Tenant was in the process of painting the rental unit as these events occurred. However, I do not find the Tenant's cost of purchasing the paint to have been

a loss that resulted from any breach by the Landlords of the Act, the regulations, or the tenancy agreement. I note it is also unclear why the Tenant could not have kept the remaining paint for her own use instead of leaving them behind.

For the reasons given above, I dismiss the Tenant's claim for the cost of the paint without leave to re-apply.

b. Locks

I find the Tenant has not provided compelling evidence to prove that more likely than not, the Landlords or someone on their behalf had entered the rental unit without the Tenant's permission in August 2023. I find it is possible that the lower lock could have been locked by mistake when the Tenant left on her trip.

Under section 31(3) of the Act, a tenant must not change a lock or other means that gives access to the tenant's rental unit unless the landlord agrees in writing to, or the director has ordered, the change. I find the Tenant did not obtain written permission from the Landlords or an order from the Residential Tenancy Branch prior to changing the locks.

Based on the foregoing, I do not find that the cost of changing the locks to the rental unit was a damage or loss that resulted from a breach by the Landlords. I also find the Tenant did not submit any invoice or receipt to prove the amount claimed for this loss. Accordingly, I dismiss the Tenant's claim for the cost of changing the locks without leave to re-apply.

c. Lack of Good Faith, Intimidation, Harassment, and Injury

Under section 28 of the Act, a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonably privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the Act;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Having considered the parties' evidence as a whole, I do not find the Landlords to have breached the Tenant's right to quiet enjoyment under the Act, such that the Tenant is entitled to compensation.

I find the Landlords were in the rental unit on July 24, 2023 with the Tenant's permission for a plumbing issue. I accept that a verbal disagreement arose between the parties, which led to a brief struggle at the Tenant's front door.

I do not find the Tenant's pictures of the doorway to prove that more likely than not, PT had been trying to force his way into the rental unit rather than trying to prevent the door from slamming onto him. I find the Tenant's friend later counselled the Tenant about her "heightened state of anxiety" due to things going on in the Tenant and her children's lives.

I find the Tenant had a prior shoulder injury that would have likely been aggravated by the Tenant pushing on the door. I find there is insufficient evidence to prove that the Tenant's injury was caused by excessive force from PT. Furthermore, I find that subsequent to this incident, the Tenant went blueberry picking on July 25, 2023 and texted NT to say that she left some for the Landlords at their door. I find the Tenant also sent NT a text message on August 5, 2023 thanking NT for sharing a "heartfelt awareness" to the Landlords' intentions and expressing that she was "grateful".

Overall, I do not find the evidence to demonstrate that there has been a pattern of intimidation, bullying, or harassment from the Landlords. I do not find there to have been frequent and ongoing interference or unreasonable disturbances that caused substantial interference with the Tenant's ordinary and lawful enjoyment of the premises, such that monetary compensation is justified.

I note the Tenant argues that the Landlords' two month notice was not issued in good faith, and claims compensation of 12 months' rent as mentioned in Residential Tenancy Policy Guideline 50. That compensation arises under section 51(2) of the Act, for when a landlord does not accomplish the stated purpose of a notice to end tenancy under section 49 of the Act, within a reasonable time and for at least 6 months. I do not find that section to be applicable here because I find this tenancy was ended pursuant to an undisputed 10 day notice to end tenancy for unpaid rent under section 46 of the Act.

For the reasons given above, I dismiss the Tenant's claim for compensation of \$20,400.00 without leave to re-apply.

Is the Tenant entitled to recover the filing fee?

The Tenant has not been successful in this application. I decline to order reimbursement of the Tenant's filing fee under section 72(1) of the Act.

Conclusion

This application is dismissed in its entirety without leave to re-apply.

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: January 21, 2024

Residential Tenancy Branch