Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened in response to two Applications for Dispute Resolution filed by the Tenant.

In the first Application for Dispute Resolution, the Tenant applied for an Order requiring the Landlord to make repairs, and to recover the fee for filing an Application for Dispute Resolution.

In the second Application for Dispute Resolution, the Tenant applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act* (Act), the *Residential Tenancy Regulation*, or the tenancy agreement, and to recover the fee for filing an Application for Dispute Resolution.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. The participants affirmed they would not record any portion of these proceedings.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

SL stated that the first Application for Dispute Resolution and Proceeding Package was sent to PA, by registered mail, on March 25, 2025. The Tenant submitted evidence from Canada Post that corroborates this testimony. PA acknowledged receipt of these

documents. I therefore find these documents were served in accordance with section 89 of the Act.

SL stated that the second Application for Dispute Resolution and Proceeding Package was sent to PA, by registered mail, on March 27, 2025. The Tenant submitted evidence from Canada Post that corroborates this testimony. PA acknowledged receipt of these documents. I therefore find these documents were served in accordance with section 89 of the Act.

Service of Evidence

On March 24, 2025, the Tenant submitted evidence to the Residential Tenancy Branch. SL stated this evidence was sent to the Landlord with the Proceeding Package on March 25, 2025.

On March 27, 2025, the Tenant submitted evidence to the Residential Tenancy Branch. SL stated this evidence was sent to the Landlord with the Proceeding Package on March 27, 2025.

PA stated that the Landlord did not receive any evidence with the documents served on March 25, 2025, or March 27, 2025. SL did not submit evidence, such as a photograph of the evidence included in the Proceeding Packages that were mailed, to corroborate the testimony that this evidence was served with the Proceeding Packages.

I find that the Tenant submitted insufficient evidence to corroborate SL's testimony that the evidence packages of March 24, 2025, and March 27, 2025, were served to the Tenant. As the Landlord denied receiving the evidence and the Tenant bears the burden of proving it was served, this evidence was not accepted as evidence for these proceedings.

The parties were advised that the Tenant could speak about the evidence submitted on March 24, 2025, and March 27, 2025, but that I was prohibited from considering the physical documents at the proceedings.

The parties were advised that the hearing would proceed and that the Tenant would be given an opportunity to request an adjournment at the end of the hearing if the Tenant felt it was necessary for me to physically view the documents submitted on March 24, 2025, and March 27, 2025. At the conclusion of the hearing SL stated that the Tenant

was not seeking an adjournment for the purposes of re-serving the evidence packages of March 24, 2025, and March 27, 2025.

On April 09, 2025, the Landlord submitted evidence to the Residential Tenancy Branch. PA stated this evidence was sent to the Tenant by email on April 09, 2025. SL acknowledged receipt of the evidence. As the Tenant acknowledged receipt of the evidence, it was accepted as evidence for the proceedings.

On April 13, 2025, the Tenant submitted evidence to the Residential Tenancy Branch. SL stated this evidence was sent to the Landlord by email on April 13, 2025. PA acknowledged receipt of the evidence. As the Landlord acknowledged receipt of the evidence, it was accepted as evidence for the proceedings.

On April 19, 2025, the Tenant submitted a copy of a previous dispute resolution proceeding, the file number for which appears on the first page of this decision. SL stated this decision was sent to the Landlord by email on April 19, 2025. PA acknowledged receipt of the decision. This is a copy of a decision that is in the possession of both parties and is not considered evidence for these proceedings.

Preliminary Matter #1

With the consent of both parties, the first Application for Dispute Resolution was amended to reflect the correct spelling of the Landlord's name.

Preliminary Matter #2

In support of the application for an Order requiring the Landlord to comply with the Act, the *Residential Tenancy Regulation*, or the tenancy agreement, the Tenant wrote:

The landlord is no letting me have: Peace, Quiet and Privacy during my tenancy. He keep sending disturbing emails and sending me eviction notices. I have warned him three times and he keeps it up.

At the hearing, SL clarified that the Tenant is seeking an Order requiring the Landlord to stop sending abusive emails. SL clarified that the Tenant is not seeking an Order requiring the Landlord to stop serving notices to end the tenancy.

This decision, therefore, will address the issue of whether the Landlord should stop sending abusive emails.

Preliminary Matter #3

At the hearing the Tenant applied to amend the Application for Dispute Resolution to include a claim for financial compensation on the basis of a breach of the Tenant's right to quiet enjoyment of the rental unit.

Rule 4.1 of the Residential Tenancy Branch Rules of Procedure allows an Applicant to amend an Application for Dispute Resolution by filing an Amendment to an Application for Dispute Resolution. I find the Tenant did not file an Amendment to an Application for Dispute Resolution to include a claim for financial compensation for a breach of the Tenant's right to quiet enjoyment of the rental unit.

Rule 7.12 of the Residential Tenancy Branch Rules of Procedure allows an Applicant to amend an Application for Dispute Resolution at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

I find it was not reasonable for the Landlord to anticipate that the Tenant would be amending the Application for Dispute Resolution to seek financial compensation, given that there was not mention of financial compensation in the original Application for Dispute Resolution. I therefore decline the application to amend the Application for Dispute Resolution to include a claim for financial compensation.

Issue(s) to be Decided

Is there a need to issue an Order requiring the Landlord to repair the floors?
Is there a need to issue an Order requiring the Landlord to stop sending abusive emails to the Tenant?
Is the Tenant entitled to recover the cost of filing an Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began May 02, 2021.

The Tenant is seeking an Order requiring the Landlord to repair flooring that was damaged by water.

The Landlord and the Tenant agree that this issue was the subject of a previous dispute resolution proceeding, the number for which appears on the first page of this decision. In the previous decision a Residential Tenancy Branch Arbitrator concluded, in part, that after reading the three inspection reports submitted, they were unable to conclude "at this time" that the floor was damaged by the actions or negligence of the Tenant.

The parties were advised that I am now bound by the decision of the first Arbitrator unless there was additional evidence that was not before the previous Arbitrator. Neither party raised additional evidence that was not available to the previous Arbitrator.

The inspection report from the Landlord's insurance company declares that there is a potential for sickness or discomfort if the floors are not repaired.

PA stated that the Landlord intends to repair the floors and that the Tenant has agreed to vacate the unit between April 28, 2025, and May 13, 2025, to facilitate that repair.

SL stated the rental unit will be vacated between April 28, 2025, and May 13, 2025, while the floor is being repaired.

PA objects to paying the filing fee for filing the first Application for Dispute Resolution. The Landlord contends that the Tenant did not need to file the Application for Dispute Resolution because the Landlord had agreed to repair the floor on March 07, 2025, which is before the Application for Dispute Resolution was filed.

SL agrees that on March 07, 2025, the Landlord declared the flooring would be repaired. SL stated that the Tenant filed the Application for Dispute Resolution in which they applied for a repair Order on March 24, 2025, after they received a message from the Landlord on March 24, 2025, in which the Landlord declared that the repairs would not be completed until the Tenant agreed to pay the Landlord's insurance deductible.

PA agrees that the Landlord sent the Tenant a message on March 24, 2025, in which the Landlord declared the floors would not be repaired until the Tenant agreed to pay the Landlord's insurance deductible. PA stated that this message was sent because of abusive language used by the Tenant in previous electronic communications.

The Tenant is seeking an Order requiring the Landlord to stop sending abusive emails. The Tenant was given the opportunity to read out examples of abusive language used in communications by the Landlord. In an email sent on March 21, 2025, at 7:45, which was read out by SL, the Landlord referred to the Tenant as a "a drama king and top quality liar and a "person with nuisance". The Landlord acknowledge using this language, which the Landlord agrees is inappropriate.

In an email sent on March 23, 2025, at 11:41, which was read out by SL, the Landlord referred to the Tenant as a "liar" and a "parasite". The Landlord acknowledged using this language, which the Landlord agrees is inappropriate.

The Landlord and the Tenant agree that they will use respectful language in future communications.

SL stated that the Landlord's language was very difficult for him as the Tenant was recovering from surgery.

PA stated that the language used was a direct response to the abusive language used by the Tenant.

Analysis

Section 32(1) of the Act requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based on the undisputed evidence, I find that the kitchen floor was damaged by water.

Based on the inspection report from the Landlord's insurance company, I find that there is a potential for sickness or discomfort if the floors are not repaired. I therefore find that the Landlord is obligated to repair the floor, pursuant to section 32(1) of the Act.

I Order the Landlord to repair the damaged flooring when the rental unit is vacated between April 28, 2025, and May 13, 2025.

As the parties were advised at the hearing, I am currently bound by the previous Arbitrator's decision that there was insufficient evidence to conclude that the floor was

damaged by the actions or negligence of the Tenant. I am barred from reconsidering this issue by the principle of res judicata, which is a rule in law which establishes that a matter that has been adjudicated by a competent court cannot be further considered by the same parties.

I find that the previous Arbitrator's decision left it open to the Landlord to have this matter reconsidered if the Landlord obtained further proof of the cause of the damage. In their decision the Arbitrator declared that "At this time, the Landlord has failed to prove that the damages to the rental unit are the result of the actions or negligence of the Tenant…"

In my view, this should be interpreted to mean that if the Landlord obtains additional evidence to support a finding that the damage was caused by Tenant, the Landlord would retain the right to serve another One Month Notice to End Tenancy for Cause and/or to file a claim requiring the Tenant to compensate the Landlord for the cost of repairing the floor. In the previous decision, the Arbitrator concluded that the cause of the damage might be "definitively determined" after the flooring was removed and the subfloor was inspected.

As there is no evidence before me that was not before the previous Arbitrator, I am not at liberty to reconsider the matter. In the event the Landlord obtains more definitive evidence to show the Tenant damaged the floor, the Landlord may have the right to file an application seeking compensation for repairing the floor.

Although the parties agree that the Landlord told the Tenant on March 07, 2025, that the floors would be repaired, the parties also agree that on March 24, 2025, the Landlord told the Tenant that the repairs would not be completed until the Tenant agreed to pay the Landlord's insurance deductible. As the Landlord was not agreeing to make repairs on March 24, 2025, I find it was reasonable for the Tenant to file the first Application for Dispute Resolution, seeking an Order requiring the Landlord to make the repairs.

As it was reasonable for the Tenant to file the Application for Dispute Resolution on March 24, 2025, I find that the Tenant is entitled to recover the cost of filing the first Application for Dispute Resolution.

Section 28 of the Act entitles tenants to quiet enjoyment including freedom from unreasonable disturbances. In my view, this includes freedom from the use of abusive language, either verbally or in writing.

On the basis of the undisputed evidence, I find that the Landlord used inappropriate terms when communicating with the Tenant, including calling the Tenant a “liar”, a “parasite”, and a “drama king”. I find these terms are inappropriate and could be considered a breach of the Tenant’s right to quiet enjoyment.

I therefore Order the Landlord to respect the Tenant’s right to quiet enjoyment by communicating with the Tenant in a respectful manner, using respectful language at all times.

On the basis of the email communications submitted in evidence by the Landlord, I find that the language used by the Tenant was far more offensive than the language used by the Landlord. For example, the email the Tenant sent to the Landlord on March 08, 2025, at 11:49 contained highly inappropriate language that is too offensive to record in this decision.

Section 28 of the Act does not provide landlords with the same right to quiet enjoyment as it guarantees to landlords. I therefore cannot Order the Tenant to respect the Landlord’s right to quiet enjoyment by communicating with the Tenant in a respectful manner.

The parties are reminded however, that section 47(1)(d)(i) of the Act allows a landlord to end a tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. The Tenant is cautioned that continued inappropriate communications with the Landlord could result in the Landlord attempting to end this tenancy pursuant to section 47(1)(d)(i) of the Act.

I find that the Tenant did not need to file a second Application for Dispute Resolution. As the Landlord used inappropriate language prior to the first Application for Dispute Resolution being filed on March 24, 2025, I find the Tenant could have included the application for an Order requiring the Landlord to comply with the Act, the *Residential Tenancy Regulation*, or the tenancy agreement when the first Application for Dispute Resolution was filed.

Even if the Tenant did not think to include the Order requiring the Landlord to comply with the Act, the *Residential Tenancy Regulation*, or the tenancy agreement when the first Application for Dispute Resolution was filed, the Tenant could have amended the original Application for Dispute Resolution to include this claim, pursuant to Rule 4.1 of the Residential Tenancy Branch Rules of Procedure.

As the Tenant did not need to file the second Application for Dispute Resolution, I dismiss the application to recover the fee for filing the second Application for Dispute Resolution, without leave to reapply.

Conclusion

I Order the Landlord to repair the damaged flooring in the unit when the rental unit is vacant between April 28, 2025, and May 13, 2025.

I Order the Landlord to always communicate with the Tenant in a respectful manner, using respectful language.

As requested at the hearing, I hereby authorize the Tenant to withhold $100.00 from one monthly rent payment, in compensation for the fee paid to file the first Application for Dispute Resolution.

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: April 22, 2025

Residential Tenancy Branch