Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, RR, FF

Introduction

This hearing was scheduled in response to the tenant's application for dispute resolution in which the tenant has requested compensation for damage or loss under the Act, an Order the tenant be allowed to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant, included, submissions.

Preliminary Matters

At the start of the hearing the tenant said that she submitted an amended application by way of an evidence submission given to the Residential Tenancy Branch (RTB) on November 6, 2014. This evidence was received by the landlord on November 6; only 4 days prior to the hearing. The tenant submitted her application on June 25, 2014; the Rules of Procedure in effect at the time required all evidence submissions be made at least 5 days prior to the hearing. Therefore, the tenant's late evidence was not considered; the tenant was given ample opportunity to make oral submissions.

The tenant said that her late evidence was meant to amend her application. The tenant confirmed that she did not complete an amendment to the application and that a copy of an amended application was not served to the landlord. Therefore, I determined I would consider only those matters included on the June 25, 2014 application for dispute resolution.

The tenant made a request for a summons for 2 of the landlord's employees who she alleges have harassed her. The tenant said that this evidence was required for a

hearing that is to be held between the parties in December, 2014. The tenant said she has made another claim for criminal harassment against the landlord.

RTB policy suggests that a summons may be issued at the discretion of an arbitrator. The information sought must be relevant to the claim and cannot be used to seek out information without any clear relevance to the issue before the arbitrator. The tenant said that the summons was needed, in accordance with section 7, for clarification of fraudulent statements made against the tenant and for the purpose of harassment and intimidation and on-going threats. The tenant could not explain how this information related to her application; what the witnesses would say; nor could she articulate what she hoped to accomplish by obtaining a summons. The tenant did not explain how section 7 of the Act, related to mitigation, was relevant to a summons.

An agent for the landlord was present at the hearing; prepared to respond to the tenant's claim. Therefore, in the absence of any compelling reason to issue a summons to other staff members, I denied the request for a summons.

The tenant made a request for adjournment. The tenant said she had been ill during the week preceding the hearing. The tenant said that she wished to have more time to submit the volumes of evidence that have since emerged and that her illness prevented her from doing so. I explained that the tenant had made her application on June 25, 2014 and then had 4 months during which she could make written submissions. The tenant was also told that evidence, to the extent possible, should be supplied to the RTB and respondent at the time the application is made and served. I explained that an adjournment would not allow the tenant additional time to amend her application or to make further written submissions. Therefore, in the absence of any compelling evidence that the tenant was suffering from an illness that barred her from participating fully in the hearing, I declined the request for an adjournment. I determined that the tenant misunderstood the adjournment process; in that it would not allow her to make further written submissions or amendments to the application. Throughout the hearing the tenant was given every opportunity to make oral submissions.

I reviewed the tenant's six-page hand-written submission that was given with the application for dispute resolution; no other evidence was submitted within the required time-frame.

The landed made a 40 page submission, sent to the tenant on October 29, 2014 by registered mail. The landlord also sent that evidence to the tenant, via fax. Despite a previous decision where the tenant agreed she should be served via fax; she said she did not receive the faxed evidence. Once the landlord said the evidence had also been sent by registered mail the tenant acknowledged that she had received that mail. The landlord said the Canada Post information showed the tenant signed accepting the mail on November 3, 2014; 6 days prior to the hearing.

During the hearing the tenant opened the landlord's evidence package.

The tenant's written submission consisted of 6 hand-written pages.

Issue(s) to be Decided

Is the tenant entitled to rent reduction related to a loss of quiet enjoyment, moving costs and cleaning costs?

Background and Evidence

The tenancy commenced in December 2010; she rents a bachelor suite in a 109 unit apartment building. The current landlord acquired the building in September 2012. Rent is $565.00 due on the 1st day of each month.

The parties agreed that this is their 5th hearing held in 2014. The following decisions have been issued; the files numbers are referenced on the cover page of the decision. A brief, but not exhaustive list, outlining matters in dispute is as follows:

Decision Date	Matters in dispute	Outcome
February 15, 2014	Tenant application to cancel a 10 day notice; compensation for emergency repairs, repairs, damage or loss, the cost of emergency repairs, an order to change the locks, to suspend or set conditions on landlord entry	Tenant arrived to hearing late and left hearing before it was concluded – dismissed without leave to reapply
June 22, 2014	Tenant application to cancel a 1 month Notice ending tenancy for cause	Notice cancelled
September 15, 2014	Tenant application for compensation related to repeated requests made for the tenant's personal information; landlord entry to the unit without notice; continued lack of notice of entry or the landlord does not arrive; loss of the tenant's job; other occupants being given notice of entry but not the tenant.	Dismissed without leave to reapply
October 3, 2014	Landlord application requesting monetary Order for unpaid rent and Order of possession retain deposit. Tenant applied for more time to cancel the Notice, to cancel the Notice, compensation for damage and loss under the Act, aggravated damages and loss of quiet enjoyment. Related to job loss and fear she would not have a home to return to.	Landlord granted monetary Order, less $100.00 in fees owed to tenant; Order of possession issued; mutually settled effective tenancy end date. Landlord to retain deposit. Tenant claim dismissed without leave.

The tenant has now submitted a 3rd claim for damage or loss under the Act. The claim, as set out in a document served to the landlord with the hearing package, is as follows:

- $2,825.00 - 5 month's rent reduction
- $1,700.00 moving costs; and
- $80.00 cleaning costs at $10.00 per hour related to plumbing and maintenance.

The tenant was asked which 5 month's she was referring to in her claim. The tenant had difficulty expressing which months her claim covered; she then decided that it was for the period the landlord has managed the rental unit.

The tenant's written submission specified she had a right to quiet enjoyment and freedom from unreasonable disturbance, exclusive possession, reasonable privacy and freedom from interference. The tenant submitted that the landlord allowed interference and violence by another occupant, that the landlord breached her right to quiet enjoyment and ignored her requests they not do so. The tenant submits that the unit was then unfit for habitation. The landlord imposed penalties and restrictions that were not in the original agreement. The landlord also made multiple requests for personal information.

The tenant also submits the landlord has been overt in repeatedly threatening her tenancy and that rather than comply with the Act that the tenancy issues raised by the tenant were seen as problematic and that the outcome should be the end of the tenancy. The tenant specifies that these problems have been backed up by repeated threats, intimidations, multiple eviction notices and failed hearings. The tenant submits the landlord has had 3 failed eviction attempts.

The tenant feels bullied, intimidated, defamed and slandered. The tenant states that the 2 witnesses she wished to have summoned have issued written statements that are extremely aggressive. The tenant feels persecuted and intimidated.

The tenant writes that all services have been restricted or removed and access to common areas interfered with. The tenant requested additional damages for mental suffering, medical and police intervention, distress and humiliation.

During the hearing I had to repeatedly ask the tenant to make her oral submissions, specific to her claim. The tenant was able to articulate general concerns, but was not focusing on the details of her claim as indicated with her application. When asked, repeatedly, to focus on the details of her claim during the hearing the tenant could not provide any specific information, outside of the allegations made in the written submission. At the start of the hearing it took a considerable amount of time to deal with the preliminary matters and to then have the tenant shift to the details of the dispute. I explained that the tenant was required to prove her claim and that the absence of specific, reliable and detailed information would impact her ability to

succeed. The tenant said that I was being patient with her, and apologized for not having her facts straight.

The tenant said she had wanted a lawyer, but provided no information on attempts made to obtain legal counsel or any other assistance. The tenant repeatedly said there were a lot of issues to be dealt with; that she had voluminous evidence and witnesses. The tenant said that she could not amend her application and that she would like to put her issues forward, that past matters have been frivolous and that her list of issues is long. The tenant alleged the landlord has given fraudulent testimony in the past, that she had health issues and could not speak.

The tenant said that some of the past decisions and issues are under investigation. The tenant pointed to the decision issued on September 15, 2014; that the arbitrator found she had lost her job due to the actions of the landlord. During the hearing we referred to the decision and I pointed out that the arbitrator had not made a finding that the landlord had caused the tenant to lose her job; only that the tenant had submitted this was the case.

The tenant said that on October 24, 2014 between 11 a.m. and noon someone was in her apartment. The tenant was asleep on the couch and awoke to see an orange shirt turning around and leaving her apartment. The tenant said the lawyers will need to speak to this. The tenant wrote that she does not feel safe, that she has spent several months living elsewhere and she has been forced out of the rental unit. She cannot afford to move as she has lost her job.

The tenant said her case was so complex and that she could not address everything that had been heard in the past. The tenant said she was under duress and she apologized for her facts not being straight. There is a long list of negligence and box-loads of evidence that she could not organize. The tenant could also not have her witnesses present.

The tenant said she did not have use of her sink for 5 months and that her fridge has failed and the landlord did not respond.

The tenant declined to provide testimony in relation to the claim for cleaning. The tenant said that her current claims are minor compared to those that will be dealt with in the upcoming hearing.

The landlord responded that these issues have been dealt with during previous hearings. The landlord said the tenant is making general claims. The landlord wondered how the tenant could make a claim when she is not paying her rent. The landlord said notices of entry have been given for the unit.

I explained that I would consider any previous decision raised by the parties, in order to ensure that I did not interfere with past decisions issued.

The tenant said the landlord attempts to derail hearings by bringing up unrelated matters.

The tenant said she will now apply for compensation related to parking and storage.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

This decision has been made based on the oral testimony and the written submissions. The tenant said she had volumes of evidence but provided no cogent reason as to why she failed to supply more than 6 pages of evidence on an application made 4 months ago. As I explained during the hearing; the tenant knew she had a claim in June 2014; yet she chose not to supply evidence in support of that claim at the time the application was made or within the time frame set out in the Rules of Procedure. The tenant also failed to ensure her witnesses were present for the hearing.

I have given the tenant's written and oral submissions careful consideration. The tenant was able to easily express herself, but I found her submissions general in nature, lacking specificity and any significant detail. Both parties were respectful during the hearing; and no issues were raised in relation to the right to be heard. During the hearing every attempt was made to provide the tenant with time to explain her claim and the basis of the monetary amounts.

From the decisions that have been issued in the past I find that the matters related to the loss of the tenant's job, claims for the loss of quiet enjoyment, aggravated damages, allegations of illegal entry to the unit by the landlord have been previously decided and are dismissed without leave to reapply.

As the parties were informed during the hearing, I cannot re-hear, change or vary a matter already heard and decided upon, as I am bound by any earlier decision, under the legal principle of *res judicata*. Res judicata is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent application involving the same claim.

Therefore, as the current application for dispute resolution contains requests that duplicate those made as part of the decisions issued on September 15 and October 3, 2014, including compensation related to the loss of quiet enjoyment, aggravated damages, alleged illegal entry by the landlord, the loss of the tenant's job and interference by the landlord, I find that the matters are already decided and that the

legal principle of res judicata applies. The claims have previously been dismissed without leave to reapply.

I find there was no evidence before me, on the balance of probabilities, that the landlord has caused mental suffering, medical and police intervention, distress and humiliation, stress, a loss of quiet enjoyment since September 2012, or the loss of facilities and related health concerns. The tenant included these allegations as part of her written submission, but provided no evidence in support of such a claim, other than general accusations. Therefore, as the tenant included these claims in her application submission and the detailed calculation of her claim I find that this portion of her claim is dismissed.

In relation to the tenant's claim for moving costs; I find that they relate to matters previously decided and, in the absence of a successful claim for a loss of quiet enjoyment supporting the need to move, the cost of moving must be borne by the tenant. Further, the tenancy has ended as the result of the decision issued on October 3, 2014 where a 10 day Notice to end tenancy for unpaid rent was upheld. Therefore the claim for moving costs is dismissed.

There was no evidence before me that the landlord entered the tenant's unit on October 24, 2014; only an allegation that I find, on the balance of probabilities, is not proven and fails to support compensation to the tenant.

The tenant chose not to make any more than a written submission for cleaning costs. On the basis of the written submission I find, on the balance of probabilities that the claim is not proven and is dismissed.

During the hearing the tenant said that she has submitted another application for dispute resolution with a hearing set for some time in December 2014. I point out section 62(4) of the Act, which provides:

> *(4) The director may dismiss all or part of an application for dispute resolution if*
>
> > *(a) there are no reasonable grounds for the application or part,*
> > *(b) the application or part does not disclose a dispute that may be determined under this Part, or*
> > *(c) the application or part is frivolous or an abuse of the dispute resolution process.*

To this date 3 separate applications requesting compensation for damage or loss under the Act; including a loss of quiet enjoyment and aggravated damages have been heard.

Conclusion

The claim for moving costs, cleaning and damage, allegations of illegal entry to the unit, mental suffering, medical and police intervention, distress and humiliation, stress, a loss of quiet enjoyment since September 2012, the loss of facilities and related health concerns caused by the landlord is dismissed.

The balance of the claim related for compensation for the loss of quiet enjoyment, aggravated damages, alleged illegal entry by the landlord, the loss of the tenant's job and interference by the landlord the have been previously decided.

This decision is final and binding and 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: November 12, 2014

Residential Tenancy Branch