Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, ERP, RP, LRE, LAT, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs and emergency repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. As the landlord confirmed that Tenant RPB (the tenant) handed him a copy of the tenants' dispute resolution hearing package on November 16, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act.* Since both parties confirmed that they had received one another's written evidence provided to one another within the timeframes established in the Residential Tenancy Branch's Rule of Procedure, I find that this written evidence was served in accordance with section 88 of the *Act*.

The tenants also submitted considerable late evidence, mostly photographs of the condition of the rental property taken when the tenants vacated the rental property on November 29, 2018. As this evidence had little bearing on the issues properly before me, were not served to the landlord, and were only submitted within a few days of this hearing, I advised the parties that I would not be considering this very late evidence.

The parties also confirmed that the tenants vacated the rental unit on November 29, 2018, and have surrendered vacant possession of these premises to the landlord.

The parties agreed that the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on September 29, 2018. Although the tenants applied to cancel the 1 Month Notice, an arbitrator appointed pursuant to the *Act* made a November 15, 2018 decision (see reference on first page of this decision), and granted the landlord an Order of Possession based on the 1 Month Notice. Although many of the items listed on the tenants' current application duplicated the outcomes sought in the previous arbitration decision, the previous arbitrator dismissed all of the portions of the previous application with leave to reapply. That arbitrator only considered the tenants' application to cancel the 1 Month Notice and the tenants' application to recover their filing fee for that application.

Since this tenancy has ended, the tenant withdrew the non-monetary elements of the current application, as these issues are now moot. The tenants' applications for the following are hereby withdrawn:

- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs and emergency to the rental unit pursuant to section 33; and
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses arising out of this tenancy, including losses of their quiet enjoyment and privacy in the premises and their loss in the value of their tenancy as a result of the landlord's withdrawal of services and facilities that the tenants expected to receive as part of their tenancy agreement? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties signed a one-year fixed term tenancy for the main floor of this rental home on June 23, 2017. According to the terms of their Residential Tenancy Agreement (the Agreement), a copy of which was entered into written evidence for this hearing, the tenancy was to run from August 1. 2017 until July 31, 2018. When the initial term expired, the tenancy continued as a month-to-month tenancy. Monthly rent was set at $1,400.00, payable in advance on the first of each month. The tenants were also responsible for 50% of the gas and hydro bills for this home, shared with the landlord who lives in what the tenants maintained was an unauthorized separate suite in the lower level of this home. Although the tenants paid the landlord a $675.00 security deposit, both parties agreed that the landlord has returned that deposit in full to the tenants at the end of this tenancy.

The tenants' application for a monetary award of $8,590.20 included the following items listed on the Monetary Order Worksheet they entered into written evidence for this hearing and which I have summarized below:

Item	**Amount**
4 Months of Loss of Peace, Privacy and Enjoyment (4 Months x $1,400.00 = $5,600.00)	$5,600.00
6 Hours Loss of Wages	190.20
Loss of Driveway Use x 13 months (13x $100.00 = $1,300.00)	1,300.00
Loss of Complete Comfort of Bathroom Use x 7 months (7 x $50.00 = $350.00)	350.00
Inspection Report Concerning Health and Safety Cond.	1,155.00
Recovery of Filing Fee for this Application	100.00
Total of Above Items (which did not total the $8590.20 claimed by the tenants)	**$8,695.20**

At the hearing, the tenant provided a broad explanation for how the tenants selected four months as the appropriate time frame whereby the tenants should be entitled to a full recovery of the rent they paid as compensation for the behaviours and actions of the landlord that the tenants found objectionable. The tenant made special note of the

alleged incidents where the landlord entered the tenants' suite without the tenants' permission. The tenant provided sworn testimony and written evidence regarding some of these incidents, in which the landlord accessed the tenants' suite while the tenant's female partner, the co-tenant was sleeping naked on her bed. Although the tenant estimated that the landlord had entered the rental suite without the tenants' authorization on a dozen occasions, it was clear from the tenant's presentation that this was only an approximation and not based on details outlined in his written submission or sworn testimony. The tenant testified that the landlord maintained that it was his home and he could come and go as he pleased to all areas of the house.

The tenant's sister, Witness GB, provided considerably more detail regarding the incidents of alleged illegal entry into the rental unit by the landlord. Witness GB identified a series of specific times and dates from July 17, 2018 until August 12, 2018 when these incidents occurred. Both Witness GB and the tenant maintained that they approached the local police with respect to these unauthorized entries into the rental suite and were advised that they would need to obtain orders from the RTB allowing them to change the tenants' locks and to prevent the landlord from accessing the rental unit.

The landlord initially denied that he entered the tenants' suite without written authorization to do so. Later, the landlord corrected this testimony, stating that he only entered the tenants' suite when he had made a written request to do so or when the tenants invited him to enter the suite. The landlord questioned whether the tenants had actually contacted the police, and maintained that letters that the tenant and Witness GB claimed to have sent him about this issue and others were not sent as they maintain on September 13, 2018, but were sent after the landlord issued the tenants the 1 Month Notice on September 29, 2018. The landlord said that he only received any of the letters from the tenant raising issues about this tenancy when he received his dispute resolution hearing package and written evidence in November 2018 for the previous hearing.

The tenants' application for a monetary award equivalent to four month's rent also appears to have been intended to address all of the problems associated with the tenancy that were not specifically identified in the remainder of their Monetary Order Worksheet. These would include the tenants' claim that the landlord refused to operate the heat at a high enough level to keep the tenants warm in their main floor rental space, as well as periods when the landlord left town for periods up to three days, turning the heat off while he was gone. This part of the tenants' application was also intended to compensate the tenants for their periodic loss of hydro, due to faulty

breakers and an alleged overloading of the electrical system due to the landlord living in an unauthorized suite in the basement without adequate upgrading to accommodate this additional load placed on the electrical system. This part of the tenants' claim was also to include the inadequacy of the electrical outlets in the rental unit, which the tenant maintained they asked the landlord to remedy a number of times without success until some limited repairs were undertaken near the end of this tenancy.

The landlord denied having received complaints from the tenants about deficiencies in the services provided to the tenants until after the landlord issued them the 1 Month Notice. The landlord said that when repairs were requested, he promptly and effectively addressed them, calling in qualified tradespeople to undertake this work.

The tenant confirmed that the loss of wages he was seeking in this application was to compensate him for the time he had to spend in addressing this situation and in preparing evidence for this hearing.

I also received conflicting evidence with respect to the tenants' claim that the landlord withdrew use of the driveway from the tenants, an element specifically identified as being available to the tenants in their Agreement. The tenants said that when the landlord moved into the suite below them in August 2017, he immediately took possession of the driveway where they were supposed to be parking. As it was a single lane driveway at that time, the landlord forced them to park on the lawn or in front of the house. The Agreement specifically stated that they were not supposed to park their vehicles on the road in front of the house and that the tenants rent included two parking spaces on the driveway. The landlord said that he was unaware of this being an issue until approximately August 2018, at which time he widened the driveway so as to enable the tenants to park beside him. Prior to that time, the landlord said that the tenants were parking on what the landlord considered to be a "second driveway" at a greater distance from the entrance to their suite.

There were also conflicting accounts of the extent to which the tenants' bathroom required repairs during the course of this tenancy and whether the repairs undertaken by the landlord were effective. The tenant provided written and photographic evidence and sworn testimony that even after the landlord completed work to repair their bathroom, the bathroom was subject to leaks below, which caused the landlord to issue them a long list of instructions to ensure that their use of their bathroom did not inconvenience him. The landlord maintained in his written evidence and his sworn testimony that qualified people made the plumbing repairs and installed the bathroom

fittings and that the tenants had no grounds for obtaining a monetary award for problems associated with their bathroom.

The tenant said that he commissioned the inspection report without obtaining the landlord's agreement to pay for this inspection. The tenant said that he took this action as he needed this expert evidence to assist him in his claim for compensation from the landlord. As was noted earlier, the tenants original October 3, 2018 application to cancel the landlord's 1 Month Notice included requests for compensation and a series of orders against the landlord. The inspection was conducted on October 18, 2018, and the report was completed and finalized on October 28, 2018.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous statements, letters and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below. I will address the tenants' claim in the order listed above and in the tenant's Monetary Order Worksheet.

Section 28 of the *Act* outlines tenant's rights to quiet enjoyment under the following terms:

> ***28*** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> *(a) reasonable privacy;*
>
> *(b) freedom from unreasonable disturbance;..*

Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

In this case, the parties presented starkly different accounts of whether the landlord entered the tenants' suite and interfered with their reasonable expectation of privacy and whether his actions affected their quiet enjoyment of the premises. I found neither the landlord or the tenant were particularly consistent or clear in their sworn testimony on this issue. The tenant did not present as having any real idea of how many times he was maintaining the landlord illegally entered the rental suite, which at one level is not surprising given that there was seldom anyone present when the tenant claimed this

occurred. As was noted earlier, the landlord's statements also varied, from stating that he never entered the rental unit without legal authorization to do so, to admitting that he had not provided written notice on some occasions, to saying that he only entered the suite upon the tenants' invitation. I found the most credible evidence on this issue was provided by Witness GB who had specific times and dates, and provided very detailed descriptions of what happened when she came to visit Tenant BK who was receiving cancer treatments at the time and was on medication. Although I gave the landlord an opportunity to ask questions of Witness GB, he did not question Witness GB on the accuracy of any of her statements. Based primarily on the undisputed sworn testimony of Witness GB, who presented as a most credible witness, I find on a balance of probabilities, it more likely than not that there has been a loss of quiet enjoyment based on invasions of the tenants' right to privacy and freedom from unreasonable disturbance.

In assessing a suitable allowance for the tenants' loss of quiet enjoyment, I have also taken into account the other aspects of the loss in the value of their tenancy, which the tenants have combined in their claim for the recovery of four full months of rent from the landlord. These include but are not limited to the tenants' concerns about inadequate heat, and sometimes no heat for periods of up to three days on one occasion, malfunctioning electrical systems that caused frequent tripping of the electrical breakers which the tenant described as lasting from 10 minutes to several hours, inadequate electrical outlets, and a range of other problems. There is conflicting written evidence from the parties and sworn testimony from the parties on these issues.

Section 32(1) of the *Act* establishes a landlord's duty to maintain rental premises in a state of decoration and repair as follows:

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

The landlord maintained that many of the issues raised by the tenants with respect to required repairs were not formally raised with the landlord until the tenants received their eviction notice for cause on September 29, 2018, and introduced these issues in support of their monetary claim. In this regard, I note that even the tenant admitted that

the only letter sent to the landlord about these matters before the issuance of the 1 Month Notice was provided to the landlord on September 13, 2018, a letter the landlord denies having received until it was included in the tenant's application for the previous hearing. The other letters, dated October 8, 2018 and October 10, 2018 from the tenant's witness, were issued after the 1 Month Notice was issued.

While there has been a loss of quiet enjoyment in this tenancy, I find that the amount claimed and the duration of that claim made by the tenants is far in excess of any actual loss in the value of the tenancy that the tenants experienced. The tenant's somewhat hesitant testimony that the landlord likely entered the rental unit without authorization twelve times may be an excessive estimate as it is entirely possible as the landlord maintained that the landlord did so on the invitation of the tenants on some occasions. However, the undisputed sworn testimony given by Witness GB provided a disturbing account of a landlord who did not fully understand the rights to privacy that the *Act* provides to tenants, at least from the period from July 17, 2018 until the landlord issued the 1 Month Notice in late September 2018. Rather than the recovery of four months rent for the tenants' loss of quiet enjoyment and the problems outlined above that the tenants have claimed, I find on a balance of probabilities that the tenants are entitled to a retroactive reduction in their monthly rent for the months of July, August and September of 10%. This three month period coincides with the period immediately before the landlord issued the 1 Month Notice, after which it would appear that the landlord was familiar with and more attentive to the tenants' concerns. Most of this 10% reduction is provided for the loss of privacy which has no doubt affected the quiet enjoyment of the tenants. This results in a monetary award in the tenants' favour in the amount of $420.00 ($140.00 x 3 months = $420.00).

I dismiss without leave to reapply the tenants' application for the recovery of lost wages resulting from the time the tenant spent preparing for this hearing and addressing the issues relating to this tenancy. As mentioned at the hearing, the only hearing-related recovery parties are entitled to obtain is the filing fee for their application.

Based on the written and photographic evidence, including the very clear provision in the Agreement in which the tenants were to receive two parking spaces in the driveway of this rental property, and the sworn testimony of the parties, I find that the landlord removed a service and facility that the tenants were to have received as part of their Agreement, a contractual Agreement that both parties signed. I attach little weight to the landlord's assertion that he did not realize that the tenants were dissatisfied with parking on what he described as the second driveway until August 2018. I find that this "second driveway" parking location was not at all what the tenants would have

anticipated would result from the provision in the Agreement. This required them to park elsewhere on the property or on the street, the latter of which was specifically identified in the Agreement as being a location where they were not to park. This issue again displays actions of a landlord who was either inattentive to the provisions of the Agreement with the tenants or chose to ignore these provisions. These actions are consistent with the tenant's assertion that the landlord advised the tenants that he could do as he pleased because he owned this property. There is undisputed sworn testimony that the landlord did widen the driveway in August 2018, to enable the parking of vehicles beside one another in that driveway. By September 1, 2018, I find that the landlord's measures in widening the driveway restored the tenants' access to parking spaces in the driveway of this rental home, even though the tenant maintained that it was a "tight squeeze" to park his vehicle there alongside that of the landlord.

Although the tenants have claimed that the landlord's withdrawal of their parking spaces in the driveway entitled them to a monthly reduction in their rent of $100.00, for a 13 month period, I again find that the tenants have been excessive in their estimate of the amount of the reduction in the value of their tenancy resulting from this effective withdrawal of a service and facility that they expected to receive when the signed the Agreement. During this period, the tenants were not without nearby parking, sometimes elsewhere on the property and other times on the street. In accordance with section 65 of the *Act*, I find that the tenants are entitled to a retroactive rent reduction of $50.00 per month for the period from August 1, 2017 until September 1, 2018. This results in a monetary award of $650.00 ($50.00 x 13 months = $650.00) for this item.

After reviewing the written evidence and the sworn testimony of the parties, I find that the tenants have not provided sufficient evidence to demonstrate their entitlement to any monetary award for the loss of complete comfort of bathroom use during this tenancy. There is little evidence that the tenants raised any formal concerns about this issue with the tenants until at least a few weeks before they were issued the 1 Month Notice. I am satisfied that the landlord did enlist the services of qualified people to install and service the bathroom renovations and repairs. I dismiss this aspect of the tenants' application without leave to reapply.

For essentially the same reasons as the tenants' claim for lost wages was dismissed, I also dismiss without leave to reapply the tenant's application to recover the cost of obtaining the inspection report obtained by the tenants. The landlord never agreed to pay for this inspection or report, and both the sequence of events and the tenant's own sworn testimony indicated that the sole purpose for retaining the company to conduct this inspection and produce this report was to provide the tenant with expert opinion to

support the tenant in their previous application for dispute resolution, and eventually the current application for a monetary award. This expense is again a hearing related cost, which is not one that can be recovered from the other party after a valid 1 Month Notice to End Tenancy has been issued and whose sole purpose was to establish grounds for seeking orders against the landlord, including a monetary Order.

As the tenants have been partially successful in their application, I find that they are entitled to recover their $100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' behalf under the following terms, which allows the tenants to recover a monetary award for losses arising out of this tenancy and for the recovery of their filing fee:

Item	**Amount**
Loss of Quiet Enjoyment and the Value of this Tenancy (3 Months x $140.00 = $420.00)	$420.00
Loss of Driveway Use x 13 months (13x $150.00 = $650.00)	650.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	**$1,170.00**

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

This final and binding decision 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: December 15, 2018

Residential Tenancy Branch