



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, CNC, RP, RR, FFT

Introduction

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

- an order that the landlord make repairs to the rental unit pursuant to section 32;
- the cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- an order to allow the tenant to reduce rent by \$547.68 for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$1,334.18 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing, she was assisted by her partner ("**TF**") who also resides in the rental unit. The landlord was represented at the hearing by its property manager ("**BT**") and its assistant property manager ("**SB**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution package and supporting documentary evidence. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Tenant Intends to Vacate and Partial Settlement

At the outset of the hearing, the tenant advised me that she intended to move out at the end of the month. The landlord confirmed that he was aware of this intention. As such, and with the consent of the parties, I grant the landlord an order of possession effective June 30, 2022 at 1:00 pm.

Additionally, TF stated that, as the tenant was vacating the rental unit shortly, she no longer required an order that repairs be made. Accordingly, I dismiss this portion of the tenant's application.

TF stated that the tenant's request for a rent reduction of \$547.68, was a retroactive request representing the estimated cost the tenant incurred in cleaning the ducts in the rental unit.

During the course of the hearing, the tenant established that the actual cost of the duct cleaning was \$563.85. During the hearing, BT conceded that it was the landlord's responsibility to clean the ducts, and agreed to pay the tenant the full amount of the cost she incurred to clean them. As such, by consent of the parties, I order the landlord to pay the tenant \$563.85.

Issues to be Decided

Is the tenant entitled to:

- 1) a monetary order of \$1,334.18; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting July 15, 2019 and ending June 30, 2020 after the end of the fixed term, the tenancy converted to a month to month tenancy, as per section 44(3) of the Act. Monthly rent is \$2,136 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$1,050, which the landlord continues to hold in trust for the tenant.

The tenant submitted a monetary order worksheet quantifying her monetary claim as follows:

| Description | Amount |
|---|-------------------|
| Replacement extension cord and ethernet cable | \$219.18 |
| Loss of use of kitchen for 9 days | \$525.00 |
| Loss of quiet enjoyment | \$700.00 |
| Total | \$1,444.18 |

I will address each of these items in turn.

1. Extension Cord and Ethernet Cable

TF testified that BT cut an ethernet cable and removed an extension cord that was run from the residential property to TF's father's camper located in an adjacent parking lot.

TF testified that he asked BT to return the extension cord, but BT refused. Accordingly, the tenant purchased a new ethernet cable and extension cord from Amazon.com. She provided an invoice for \$219.81 representing the replacement cost of these two items.

BT admitted to cutting the ethernet cable and removing the extension cord. He testified that the tenant was “stealing electricity” from the residential property and improperly siphoning it off to TF’s father. He testified that TF’s father’s camper was illegally parked in the residential property’s parking lot previously, and the landlord required him to move it. The camper was moved to the adjacent parking lot.

BT testified that he provided written warnings to the tenant to disconnect these cables, but they were unheeded. He testified that he had to cut the ethernet cable because the tenant had drilled a hole in the side of the residential property to run the cable through, from the rental unit to the camper. He could not unplug it as it was connected inside the rental unit.

TF denied drilling a hole in the rental unit. Rather, he testified that the hole was a “critter hole” which the tenant took advantage of in order to run the cable.

2. Loss of use of the kitchen

TF testified that on three separate occasions, the landlord undertook plumbing work in the rental unit to fix leaks inside the walls which were damaging the commercial unit below. He testified that each time the work commenced on a Friday, and necessitated shutting off the water in the kitchen of the rental unit. He testified that the landlord’s contractors would not return until the following Monday, causing the tenant to be without running water in the kitchen over the weekend. He testified that the tenant was without water in the kitchen from January 21 to January 25, 2022; February 4 to February 8, 2022; and May 20 to May 25, 2022.

TF testified that the tenant notified the landlord of the leak on January 21, 2022, but the other two instances were initiated by the commercial business located below the rental unit.

The tenant argued that she was without water in the kitchen for nine clear days. She seeks compensation equal to 50% of the monthly rent for these nine days.

BT did not dispute the underlying facts alleged by the tenant. He agreed that the landlord cut water off to the rental unit kitchen so that it could repair leaks and agreed that the water was cut off over the weekends, as alleged by the tenant. BT argued that a 50% rent reduction for the days the tenant was without water in the kitchen was excessive. He argued that the tenant had access to running water in the bathroom (which TF did not deny) and that the tenant was still able to cook in the kitchen. He argued that a 10% rent reduction for these nine days would be appropriate.

3. Loss of Quiet Enjoyment

TF testified that the tenant kept the dog in the rental unit and, at the time the tenant acquired the dog, she did not know it was a breach of the tenancy agreement to have done so. He testified that when BT discovered the tenant was keeping the dog, BT began to treat the tenant with “constant aggression”. He testified that this was detrimental to the tenant’s mental health, and she had to seek professional counseling.

In a written statement provided in advance of the hearing, the tenant wrote:

I was driving my son from school, and I received a call. I asked my son to pick it up. He did and I could hear a person shouting to my son on the phone, so I asked my son to put the phone on speakers while I parked the car. [BT] started shouting at me on the phone asking about my dog. I told him that yes, we had just rescued a dog. He continued shouting at me about the dog issue. My son was clearly shocked by this, so was I. Once I came home, I approached [BT] and asked him to change his tone, that I would not allow a person to verbally abuse me; he denied and refused my request. As my son and I were still altered by verbal abused, I asked my partner [TF] to call him to discuss the issue and to reiterate that he shall not address to me that way; yet again he denied there was any problem with how he spoke to me and refused to follow the request to act in a more professional manner.

The day we received the eviction notice, he stood op outside the apartment door lingering and putting his ear to the door (I saw him from the doorhole and my neighbor saw him too). After about 10- 15 mins of this he knocked at the door. I didn’t open because I was alone with my kid and afraid. Then he stayed in the parking lot looking to my window for at least 20 min more. This is symptomatic of the kind of harassment he’s been inflicting since June 2021.

Most days I live alone with my child, and we are afraid of a person that has full access to my apartment. I asked [BT] several times to please avoid coming to the apartment and communicate by email with my partner because I am afraid of him; he refuses to acknowledge this.

TF also testified that, during the investigation into the May leak, BT entered the rental unit without his or the tenant’s permission or without announcing himself. He testified that the landlord’s plumber was already in there, and that there was no need for BT to enter.

TF submitted an audio recording in which he stated BT threatened to evict the tenant. In it, TF can be heard to be approaching BT. BT asks him if he is gathering up the “hydro line” used to run electricity to his father. TF states he is not. BT stated that he took it down himself, that he took pictures to prove it, and that the tenant and BF “will not be here much longer” because he is giving them an eviction notice. TF then stated that this

he would see him at the tenancy branch, and BT responded, in a conversational tone, "Sounds good. Can't wait. I look forward to kicking you out. Take care." He then states in an explanatory tone that stealing hydro is theft, and that TF is lucky he did not call the police. TF then invites BT to call the police and walks off. TF then states, for the benefit of the recording "so that was the property manager threatening to evict us, ongoing threat and intimidation".

BT testified that when he called the tenant on her cell phone upon learning that she had acquired a dog, the cellular connection was poor. He testified that he was yelling because he was unsure if the tenant could hear him speaking. He did not know that she was on speakerphone when he was doing this. He testified that it was not his intention to be aggressive on that call, rather he wanted to make sure that the tenant could hear him.

BT testified that after this phone call, the relationship between him and the tenant and TF deteriorated quickly. He testified that shortly after this incident, TF contacted him, but he refused to speak with TF as he was not listed on the tenancy agreement and he did not know if TF was authorized to speak on the tenant's behalf. Once the tenant gave him such authorization, BT testified that he communicated with TF.

BT testified that at the time the recording referenced above is made, the tenant was in violation of the tenancy agreement by keeping a dog in the rental unit, by allowing an unauthorized camper (TF's father's camper) to park in or around the residential property, and the tenant was "stealing hydro". He testified that he was "incredibly frustrated" with the tenant. He acknowledged that he said he could not wait to evict the tenant and TF. He denied that he acted in an aggressive matter during this conversation.

BT denied listening at the door of the rental unit for 10 to 15 minutes after posting the Notice or staying in the parking lot for 20 minutes, staring at the rental unit window. He testified that he spent a few minutes at the front door of the rental unit with the Notice, trying to scrape the last piece of tape off of his tape roll so he could post the Notice on the door. He denied putting his ear to the door.

He said that he then returned to his vehicle and was arranging for a tow truck to attend the residential property and to remove the camper.

BT admitted to entering the rental unit without the explicit permission of the tenant, in order to investigate the leak in May 2022. He testified that the commercial unit located below the rental unit contacted him and reporting the leak. He sent a plumber into the rental unit and the tenant did not object. While the plumber is in the rental unit, BT was in the commercial unit below. He testified that the plumber attempted to report but he had discovered in the rental unit to him, but the plumber was having difficulty articulating the problem. BT testified he could not understand what the problem was due to the plumber's poor explanation.

BT testified that he and the plumber went back to the rental unit. He stated that he announced himself while entering and began to inspect the hot water tank (which was located near the entrance). He testified that TF immediately demanded that he leave and said that he was not allowed to enter without their permission. BT started filming the incident with his phone. The landlord submitted this video into evidence. The video showed that TF shoved BT from the rental unit. The tenant called 911 reporting that someone was in her apartment without her permission. BT yelled (so the 911 operator could hear) that he was the property manager.

TF followed BT into hallway and stepped into his personal space. BT stated that the hallway was common area and that he was allowed to be there. TF did not relent. BT gave the plumber instructions regarding inspecting the hot water tank while BT stood inches from him.

BT then proceeded to turn around and walk away from the rental unit. TF followed closely behind with his arms behind his back, crowding BT. BT placed his hand on TF chest asking him to back off, and TF said that he was asking BT to leave and was not touching him, all the while closing the gap between himself and BT. BT held the camera out to show that TF's face was mere inches away from his own.

BT continued to exit the residential property and when he arrived at a stairwell, he asked TF if TF would push him down the stairs. TF stated "yeah" and came closer. BT then accused the tenant and TF of sabotaging the hot water tank to "bait" him. TF denied this. He then asked TF to return to the rental unit and TF refused, asserting that it was "his house".

BT then walked down the stairs, and TF and the tenant (still on the phone with 911) waited at the top. BT stated that their conduct amounted to harassment of the property manager, and that it would be grounds for eviction.

Analysis

1. Ethernet cable and extension cord

It is undisputed that BT removed the extension cord and cut the ethernet cable. BT argued that he was justified to do so, in light of the warnings given.

Section 26(3) of the Act states:

Rules about payment and non-payment of rent

26(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

- (b) prevent or interfere with the tenant's access to the tenant's personal property.

While this section is written in the context of seizure of property for non-payment of rent, I find that its language is broad enough to cover seizure of property in all instances. Accordingly, the landlord was not entitled to seize the tenant's extension cord regardless of whether or not the tenant was in breach of the Act.

There is nothing in the Act specifically prohibiting a landlord from damaging the personal property of the tenant. However, I find that by cutting the ethernet cable, the landlord interfered with the tenant's access to her ethernet cable, insofar as he rendered the cable unfit for its purpose. As such, regardless of whether or not her running the ethernet cable from the rental unit to the camper amounted to a breach of the tenancy agreement or the Act, the landlord was not entitled to resort to the self-help remedy of cutting the cable.

As such I find that the landlord breached section 26(3) of the Act, and the tenants are entitled to recover the replacement cost of these items. I order the landlord to pay the tenant \$219.18.

2. Loss of water in kitchen

The basic facts on this point are not in dispute. The parties agree that the tenants were without water in the kitchen of the rental unit for nine clear days as a result of the landlord's plumbers turning off the water to undertake repairs. I disagree with the tenant's characterization of this deprivation as a loss of use of the kitchen. The tenant could still cook and food could be stored the refrigerator or cabinets. The tenant could also obtain water from the bathroom sink.

I find that the biggest inconvenience as a result of the water being cut off in the kitchen was that the tenant was unable to wash dishes during this time. Additionally, it made cooking dishes which required water less convenient, as that water would have to have been fetched from the bathroom.

I do not find that this level of inconvenience warrants the 50% rent reduction sought by the tenants. However, I do not believe a 10% rent reduction is sufficient to compensate the tenant for her inconvenience. I acknowledge that the tenant may have been discouraged from cooking as a result of the difficulty she would face in cleaning afterwards. I find that a 25% rent reduction for these nine days is sufficient compensation.

As such I ordered the landlord to pay the tenant \$160.20 ($\$2,136 \div 30 \text{ days} = \71.20 per day; $\$71.20 \times 25\% = \17.80 ; $\$17.80 \times 9 \text{ days} = \160.20).

3. Loss of quiet enjoyment

Based on my review of the documentary evidence, I do not find that the tenants have provided sufficient evidence to establish that BT acted in such a way to deprive the tenant of quiet enjoyment of the residential property.

I accept BT's testimony that the reason for his yelling on the cell phone call was because he was unsure if the tenant could hear her due to issues with her cell phone.

I do not find that the audio recording provided by the tenant supports TF's characterization that the BT threatened the tenant with eviction. Rather, I note that this conversation was initiated by TF, and that BT set out the reasons why he would be evicting the tenant. I do not find that this amounted to a threat. The landlord's basis for issuing an eviction notice was not unreasonable, and the manner in which he communicated the information to TF was calm and measured. I accept BT's testimony that he was frustrated by the way the tenant and TF conducted themselves, and I attribute his statement that he couldn't wait to evict the tenant and TF to this frustration. I find that TF was needlessly provocative in this audio conversation.

This needless provocation was on display again in the video taken by BT in May 2022. It is arguable whether or not BT was entitled to be in the rental unit to investigate the leak. I have insufficient information to determine whether or not an emergency existed. However, once BT exited the rental unit, there was no reason for TF to pursue BT into the hallway and invade his personal space. I find that TF was attempting to provoke BT. He was unsuccessful.

These two encounters cause me to doubt the tenant and TF's testimony as to the characterization of BT's other actions. I find that BT acted reasonably in both of these encounters, which is contrary to the tenant and TF's characterization of them. Accordingly, where the tenant and BT's evidence differs regarding his conduct, I prefer that of BT's.

Accordingly, I declined toward the tenants any amount for loss of quiet enjoyment. I dismissed this portion of their application without leave to reapply.

Despite the fact the tenants have been partially successful in this application, I decline to order that they are reimbursed their filing fee. On the main point of contention in this application (loss of quiet enjoyment), the landlord was successful, and the landlord consented to other parts of the tenant's application. I find that the needlessly provocative manner in which the tenant and TF interacted with BT prevented this dispute from being resolved without resorting to the Residential Tenancy Branch. As such, the tenant is not entitled to recover her filing fee.

Conclusion

By consent of the parties, pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by June 30, 2022 at 1:00 pm.

Pursuant to section 65 and 67 of the Act, I order the landlord to pay the tenant \$943.23, representing the following:

| Description | Amount |
|--|-----------------|
| Replacement extension cord and ethernet cable | \$219.18 |
| Loss of use of water in the kitchen for 9 days | \$160.20 |
| Duct cleaning (by consent) | \$563.85 |
| Total | \$943.23 |

This 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: June 24, 2022

Residential Tenancy Branch