



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNETC, MNEVC, RPP, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for:

- \$20,000.00 compensation for monetary loss or other money owed;
- \$4,600.00 compensation related to a Notice to End Tenancy for Landlord's Use of Property;
- \$4,600.00 compensation related to a fixed term tenancy with a requirement to vacate the rental unit at the end of the term;
- an Order for repairs to the unit or property, having contacted the Landlord in writing to make repairs, but they have not been completed; and
- recovery of his \$100.00 Application filing fee.

The Tenant, the Landlord, and counsel for the Landlord, F.Q. ("Counsel"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. Five witnesses for the Tenant were also available to be called on to provide affirmed testimony. The Landlord had two of these people call in again to testify on his behalf.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Early in the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single Application. In these circumstances, the Tenant indicated multiple matters of dispute, but as we had only one hour for the hearing, I asked the Tenant for his most important claim to focus on in the hearing. The Tenant said it was the claim for \$20,000.00 for compensation for monetary loss or other money owed. The Tenant's other claims are dismissed with leave to reapply.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the tenancy began on May 13, 2022, with a monthly rent of \$1,400.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$700.00, and no pet damage deposit. The Parties confirmed that they had used the security deposit for half of a monthly rent, so it is not available for use by the Landlord. They agreed that the tenancy ended when the Tenant vacated the rental unit on June 30, 2022 - a month and a half after he moved in.

The Tenant explained his claim, as follows in the hearing:

I own my own business. I have a school - a barbering school. We were planning a big event for the city, so we had to pay a lot of deposits: the guest artisans, the venue, and posters, and that was close to \$8,000.00, as I submitted in documents and photos. And I had to cancel that at the last minute, because of the stress at the house; and some days I couldn't even sleep, because of how cold it was and I couldn't continue and I lost the deposits I gave for the venue....

I asked the Tenant how the Landlord was responsible for the cancellation of his event.

That's the only reason we're here. Because of loss of enjoyment and peaceful living and not being able to return to a peaceful home. I couldn't make the gala - leaving there, and the stress to find a new place to live. It is very difficult to find a place here; I looked day and night.

I asked the Tenant why the tenancy ended, and he said:

When I moved in the place was very cold, but [the Landlord] promised to fix the issue – it was very cold – not suitable for anyone. Turn up the heat. That's how the scenario started. Not the main issue. [The Landlord] didn't do anything about the heat. She turned it off almost every day; I didn't have control of the heat.

Second, [the Landlord] kept entering my suite without proper notice, as I submitted again, to the point where it got uncomfortable. Someone moved my personal belongings, entered my bedroom, and moved personal items. She said she wanted to sell the house, then not – see video evidence. At the end she said she wanted me out, then she didn't want to sell. It was already sold on June 6, 2022. Someone kept entering the suite without notice; the house was already sold the buyer already good to go. I spoke to the current people – they didn't say they didn't want a tenant.

Counsel said:

To begin, the tenancy ended because the Tenant provided a notice May 31 saying he will vacate the property. It's in our evidence package. That's because she wished to sell, but she didn't ask him to move out. She provided notice once he found out she was selling the property.

Re the Gala, the understanding was the tenancy started on May 15, but the tenant did not move in until May 18, so he asks why the heating was not on, but he was provided with a heater, once he said it was cold. He said he'd leave if it's not 24 degrees or higher. That's when she decided to sell – no notice to end the tenancy. He has provided no doctor's notes for stress. No stress message to the Landlord. He just said: 'I am not able to do anything, because I am cold'.

I asked the Tenant how he calculated the \$20,000.00 he is claiming, and he said:

Multiple claims. I'm not a landlord, so I'm not sure exactly about the amount. The

numbers are with your judgment – whatever you think is correct and fair. Your awareness of the situation and for my claim to support it .

You can see the proof in a screen shot – it's a famous person and he was coming – see the \$2,000.00 etransfer, and some was in cash, so we couldn't have receipt for the rest of it.

There were a number of tickets printed, and we had to return a lot of people's money, because we had to cancel it. We also called the RTB. That's how we put those numbers. I'm not a landlord, and I'm not fully aware of the numbers and the dates.

Counsel said the reason why I left was because I provided a written notice. Not true. [The Landlord] came to my shop and she manipulated me emotionally to sign something – I did it for peace of mind and quiet living. She wrote the paper and she brought my friend and asked my friend. It was very uncomfortable – she didn't give me a heater.

The Tenant submitted a screen shot of having sent \$2,000.00 to someone with the initials Y.J. There was no other evidence presented to me about who Y.J. is or why \$2,000.00 was sent to this person.

The Landlord said:

To begin, the Tenant's own text messages confirm that a heater was provided to him. In relation to the claim for damages, there is no proof the event was ever cancelled. No proof money was returned – he could have provided with screen shots, but he didn't. As for the famous person – no proof of why this money was paid.

Re his claim I entered illegally, see his text messages confirming that the realtor needs to come in. There was always 24 hours notice. Any videos by the Tenant do not have Landlord in it - just him coming home and saying the rug was moved two inches. There's no proof for any of that.

I asked the Tenant if he has proof of the payments he made for the gala, and he said:

No, some was in cash, so the \$250.00 for the entry – a lot of people bought tickets and we had to return it, and there was one etransfer for two tickets over

\$400.00. And this [famous] person is known by us - this person – [C.]– based in Chicago.

The Tenant called in his Witnesses, starting with D.H., whom I asked what she knew about the Tenant's gala, and she said:

This was a big gala for the neighbourhood that they have every year to showcase his expertise in barbering, and for the community to see who he was and to generate more business. He was relatively new – he started the business at the beginning of Covid, though he's been a barber for many years.

I asked her why he had to cancel the gala, and she said: "With the stress with [the Landlord], and housing, and his father having a heart attack."

Then the second witness, M.C., called back into the hearing and I asked him about the gala. He said:

It was a barber gala – a huge event that no one's done at capacity. He's my partner in this industry. We're very well known. We had a great event planned. I had some problems, too, and couldn't get mad at him; I understood his situation at that time.

What was his situation? I asked: "Every other day he would tell me how uncomfortable it was to be in that place he was renting. There would be some misunderstandings between him and the Landlord."

Did the misunderstandings make it uncomfortable for him, I asked? He said:

They agreed and disagreed. I was there throughout all of it. I was the first person to help him. He was using my truck; it was an ongoing discomfort.

I asked this witness about the cost of the gala, and he said:

We lost our deposit we gave – \$1,000.00 to \$3,000.00 at least. We were in a loss of advertainment we dumped in. We had \$5,000.00 to \$8,000.00 ticket sales we had to cancel at the last minute. It was a cancelled event, because before you go out in the world and expand your business everyone would like to have a solid base where you put your head.

Counsel had some questions for this witness, as follows:

What was the date of the Gala when was it supposed to happen?

June 13th.

Were you aware of your partner's father's health?

Of course. It was a major heart problem in a different province.

Was the gala cancelled because of the heart problems?

No not at all, more because [the Tenant's] foundation wasn't shaken by his father, because that's what he was used to – his family lived somewhere else in sickness. The bed he sleeps on wasn't certain; someone was nagging him and being bipolar.

What was wrong with his bed?

His bed is a metaphor for the house he's renting.

What was wrong with that?

Like I said, there were miscommunications. When I was moving furniture, I was very pleasant. She was around. She opened the back gate for us to back up. It all seemed to be going really well. They met through a referral, but I was so surprised to hear that not long after, she wanted him out of there. She wouldn't turn on the heat for that.

Did you witness any of this? "I witnessed the change in the way she dealt with him."

You were present when [the Landlord] was dealing with Tenant?

Yes, at first, but, yes, I've heard the way she was speaking to him – him speaking on the phone or him telling me what happened or recordings.

First hand or recordings or what he told you?

What I witnessed first hand, and what I heard second hand made me say that she's being bipolar.

I note from the tenancy agreement that heat is not included in the rent, as set out in clause three of the tenancy agreement in the Landlord's evidence.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I let them know how I analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenant must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenant to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenant did what was reasonable to minimize the damage or loss.

(“Test”)

Based on the evidence presented to me in the hearing, I find that the Tenant is alleging that the Landlord deprived him of heat in the rental unit, contrary to the Act, regulations, or tenancy agreement. The Tenant states that this lack of heat caused him to cancel his barber gala, which cost him money.

The Tenant also said that the Landlord entered the rental unit without his permission, and he implied that she did this when he was not there. However, I find that the videos he directed me to do not provide evidence of this claim, and therefore, I dismiss it without leave to reapply.

In terms of the claim about insufficient heat, section 1 of the Act defines “service or facility”, which “includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit. “Heating facilities or services” are included within this definition, if agreed upon by the Parties.

However, clause three on page two of the tenancy agreement states: “What is included in the rent: (*Check only those that are included and provide additional information, if needed.*) This clause then listed 25 items, 13 of which were checked and 12 of which had an “X” indicating that they are not included. Heat has an “X” in the box, indicating that it is not included in the rent. The items checked as included in the rent are: water, wifi/internet, sewage disposal, garbage collection, recycling services, kitchen scrap

collection, free laundry, refrigerator, dishwasher, stove and oven, window coverings, carpets, and parking for one vehicle.

Heat is not included in the rent; therefore, I find that it was the Tenant's obligation to provide his own heater. I find that the Landlord did not breach the Act, regulations, or tenancy agreement in this regard, and therefore, that the Tenant did not fulfill his burden of proof in terms of the first step of the Test. In addition, it seems odd that if the Tenant was at risk of losing a lot of money and cancelling his gala, that a reasonable person would have spent the insignificant amount of money it costs to purchase a space heater. However, the Tenant decided to cancel his gala, and allegedly lose large amounts of money, because he was cold. This version of events does not ring true in terms of common sense and ordinary human experience.

Further, even if the Landlord had breached the Act, the Tenant has not provided proof that this breach cost him \$20,000.00 or any other amount, and therefore, the Tenant has not proven the third step of the Test.

As a result, I find that the Tenant has not provided sufficient evidence to prove his claim on a balance of probabilities. Accordingly, I dismiss the Tenant's Application for \$20,000.00 compensation from the Landlord without leave to reapply, pursuant so section 62 of the Act. The Tenant's other claims are dismissed with leave to reapply.

Conclusion

The Tenant is unsuccessful in his Application for his \$20,000.00 claim from the Landlord, as he failed to provide sufficient evidence to meet his burden of proof on a balance of probabilities in this matter. The Tenant's other claims that were severed in this proceeding and are dismissed with leave to reapply.

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: May 17, 2023

Residential Tenancy Branch