



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Landlord: OPL, FFL

Tenant: CNR-MT, CNC-MT, CNL-MT, MNDCT, LRE, OLC

Introduction

This hearing was convened as a result of the parties' applications under the *Residential Tenancy Act* (the "Act").

The Landlord applied for:

- an order of possession based on a two month notice to end tenancy for landlord's use pursuant to section 55 of the Act; and
- authorization to recover the filing fee for the Landlord's application from the Tenant pursuant to section 72 of the Act.

The Tenant applied for:

- cancellation of a 10 day notice to end tenancy for unpaid rent or utilities pursuant to section 46 of the Act;
- cancellation of a one month notice to end tenancy for cause pursuant to section 47 of the Act;
- cancellation of a two month notice to end tenancy for landlord's use of property pursuant to section 49 of the Act;
- more time to dispute the notices to end tenancy pursuant to section 66 of the Act;
- compensation of \$26,206.89 for monetary loss or money owed by the Landlord pursuant to section 67 of the Act;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit pursuant to section 70(1) of the Act; and
- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62 of the Act.

The Landlord and the Tenant attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, and to make submissions. The Landlord was represented by legal counsel LHM. The Tenant was accompanied by her sister SP as the Tenant's advocate.

Preliminary Matter – Removal of Party

The Tenant's application named a second landlord and respondent, DG. The parties' evidence indicates that DG is the Landlord's partner who resides with the Landlord in the suite above the rental unit. According to the Landlord, DG is not an owner of the rental unit. I find there is insufficient evidence that DG had acted as the Landlord's agent for the purposes of this tenancy, such that DG meets the definition of a "landlord" under section 1 of the Act. Pursuant to section 64(3)(c) of the Act and Rule 4.2 of the Rules of Procedure, I have amended this application to remove DG as a landlord and respondent.

Preliminary Matter – Tenancy Has Ended

The parties mutually agreed to end the tenancy on March 31, 2023, and the Tenant has vacated the rental unit. Since the tenancy has already ended, I find the Tenant's non-monetary claims and the Landlord's application to be moot. Pursuant to section 62(4)(b) of the Act, I dismiss the Tenants' non-monetary claims and the Landlord's application without leave to re-apply.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord confirmed receipt of the Tenant's notice of dispute resolution proceeding package as well as digital and documentary evidence. The Landlord did not submit any digital or documentary evidence related to the Tenant's monetary claim.

Preliminary Matter – Tenant's Evidence

Counsel for the Landlord argued that the Tenant's personal notes should be excluded as they are self-serving, made after the fact, and have low probative value. Counsel argued that the audio recordings submitted by the Tenant were not made with the consent of both parties.

Under section 75 of the Act, the director may admit as evidence whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be (a) necessary and appropriate, and (b) relevant to the dispute resolution proceeding.

I find the Tenant's notes include the Tenant's written account of the events that had occurred, with many of the entries given in diary format with dates. I find the Tenant's notes describe various incidents that had occurred between the parties in detail. I also find the Tenant submitted audio and video recordings of the parties' interactions. I find such evidence to be necessary, appropriate, and relevant to the issues raised in this proceeding. Therefore, I have not excluded any of the Tenant's evidence from consideration for the purpose of making this decision.

Issue to be Decided

Is the Tenant entitled to compensation of \$26,206.89 for monetary loss or other money owed?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on or around May 1, 2022 and ended on March 31, 2023. Rent was \$1,200.00 due on the first day of each month. The Tenant paid a security deposit of \$600.00. The parties did not have any written tenancy agreement.

The parties had a prior dispute resolution proceeding (the "Prior Proceeding") with a hearing on January 27, 2023. The arbitrator found that the parties did not have an agreement to waive rent, and the Tenant did not pay rent from October 1, 2022 to January 31, 2023. The arbitrator granted the Landlord a monetary order of \$4,800.00 for unpaid rent.

In this application, the Tenant seeks compensation as follows:

Item	Amount
Return of Rent from May to September 2022 ($\$1,200.00 \times 5$ months)	\$6,000.00
Security Deposit	\$600.00
Move In Costs	\$2,000.00
Move Out Costs	\$7,290.00
Property Damage (Lawn Chairs $2 \times \$129.00$)	\$258.00
Mobile Data	\$50.00
Cleaning Costs (25 hours \times 25.00 per hour)	\$625.00
Arbitration Preparation Costs	\$283.00
Cost to File Dispute	\$100.00
Harassment and Death Threats ($\$1,000.00 \times 9$ months)	\$9,000.00
Total	\$26,206.89

The Tenant gave the following testimony and evidence:

- The Tenant began documenting the behaviours of the Landlord and DG when she felt things were not right within the first two weeks of the tenancy. The Tenant eventually documented a nine-month escalation of anger, temper tantrums, and death threats.
- The problem started because the Landlord and DG were not used to living with a retired person such as the Tenant who did not go to work every day. The Landlord and DG wanted the Tenant to leave so that they could get their privacy back. The Landlord issued multiple notices to end tenancy which were without merit. The Tenant disputed the notices, which angered the Landlord. The Landlord offered a cash buyout to avoid arbitration. The Tenant sought return of rent paid and other compensation. The parties were ultimately unable to reach a settlement.
- According to the Tenant's notes, on June 26, 2022, the Tenant went outside to sit on her lawn chair, and the seat ripped right across as soon as the Tenant sat on it. The Tenant took out a second identical chair. On July 8, 2022, the Tenant found the second chair ripped across the seat after returning to the rental unit for

about an hour while the Landlord was mowing the lawn. The Tenant submits that the Landlord had cut the chairs with a knife to prevent the Tenant from sitting outside.

- The Tenant suffered extreme harassment on almost a daily basis and threats on her life. The Tenant was verbally attacked every time she went outside. The Tenant felt unsafe and would search her home after returning, as well as sleep with lights on and self-defense items nearby. There was yelling, screaming, swearing, and spitting. The Landlord ran after the Tenant's vehicle one time, slicing his finger across his throat while screaming and swearing at the Tenant. The Landlord screamed in the window while the Tenant was in the shower one time. The behaviour from the Landlord continued until the end of October 2022, when the Landlord and DG went abroad for the winter.
- The Landlord and DG would intentionally stomp on the floor from their suite above the rental unit. The Landlord and DG would set the sprinkler in the yard so that it would spray on the Tenant's patio, including the Tenant's furniture, blanket, and books.
- There were other incidents such as the Landlord unscrewing the Tenant's outside light bulb, throwing the Tenant's garden hose attachments thrown into the bushes, and accusing the Tenant of leaving light on at night.
- The Landlord and DG threw out the Tenant's belongings stored in the Landlord's shed out onto the yard between August 24 and 26, 2022.
- The Tenant believed the Landlord was entering the rental unit when the Tenant was not home, since the tape she left on the door was broken.
- The Landlord ignored the Tenant's fridge repair requests.
- The Tenant had spent many hours cleaning the rental unit upon moving in, which is something that should have been done by the Landlord.
- The Landlord had cut the Tenant's internet and cable many times, although these services were included in the rent.
- The Tenant seeks reimbursement of move in and move out costs for wrongful eviction. The Tenant has not been able to find a new place since moving out, is staying with a friend, and has her items in storage.

The Landlord gave the following testimony and evidence:

- The Landlord denies the Tenant's allegations, including those related to stomping, garden hose, and screaming. The Tenant abused the utilities and left the lights on. The Tenants tampered with the breaker box, which the Tenant denied. The Landlord called the police and the Tenant turned it back on. The

Tenant drained the hot water tank many times so the Landlord did not have hot water.

- The Landlord did not go into the rental unit.
- The Landlord did cut the Tenant's internet, but it was because the Tenant ordered movies, causing the Landlord's bill to increase to \$150.00 to \$200.00 per month. The Landlord told the Tenant she could have her internet back if she did not do that again. The Tenant was doing things to get under the Landlord's skin.
- The Tenant's chairs were already worn out when she moved in.
- Everything the Landlord and DG did was bothering and harassing the Tenant, including mowing the lawn and walking on floors at 11:00 o'clock. The Landlord told the Tenant that the rental unit is not designed for retired people.
- The Tenant was the one that slammed doors and threatened arbitration.
- The Landlord denied he had made death threats. The Tenant has been extorting the Landlord since the Landlord had issued a notice to end tenancy.
- The Landlord is retired and did not need the stress to continue being a landlord. The rental unit is no longer being rented.
- The Tenant has not provided a forwarding address and has not paid the outstanding monetary order.

The Tenant denied that she had ordered pay-per-view movies. The Tenant suggested that the Landlord could have been running several things at a time to trip the breaker box, which the Tenant helped to turn back on once notified.

Analysis

Section 67 of the Act states that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

According to Residential Tenancy Branch Policy Guideline 16. Compensation for Damage or Loss, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;

- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I will address each of the Tenant's claims as follows: (a) return of rent, (b) security deposit, (c) move in and move out costs, (d) property damage, (e) mobile data, (f) cleaning costs, (g) arbitration preparation and filing fee, and (h) harassment and death threats.

a. Return of Rent

Pursuant to section 65(1)(f) of the Act, if an arbitrator finds that a landlord has not complied with the Act, the regulations or the tenancy agreement, the arbitrator may make an order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

Under section 28 of the Act, a tenant is entitled to quiet enjoyment, including, but not limited to:

- a. reasonable privacy;
- b. freedom from unreasonable disturbance;
- c. exclusive possession, subject to the landlord's right of entry under the section 29 of the Act; and
- d. use of common areas for reasonable and lawful purposes, free from significant interference.

According to Residential Tenancy Policy Guideline 6. Entitlement to Quiet Enjoyment ("Policy Guideline 6"), a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Policy Guideline 6 further states that temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

A breach of the entitlement to quiet enjoyment may form the basis of a claim for compensation. In determining the amount by which the value of the tenancy has been

reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

In this case, I find the Landlord gave blanket denials of the Tenant's allegations and generally did not refer to any external evidence to support his testimony. For example, I find the Landlord did not submit any utility bills or refer to any communication records between the parties to support his claims.

In contrast, I find the Tenant's personal notes to include more detailed descriptions of specific incidents between the Tenant and the Landlord or DG. I find that the entries in the Tenant's personal notes are generally dated and appear to be documented shortly after the incidents took place. I find the Tenant's notes include both positive and negative observations about the Landlord and DG. In addition, I find the Tenant provided screenshots of the parties' written communication records, photos, as well as video and audio recordings.

Based on the evidence presented, I find the Tenant's right to quiet enjoyment was breached as follows:

- There was screaming, yelling, and swearing from the Landlord on multiple occasions, as documented in the Tenant's personal notes. Specifically, I accept the Tenant's evidence that on August 18, 2022, the Landlord had sworn at the Tenant and threatened to "kill" her since the Tenant did not agree for the Landlord to enter the rental unit with his key. I find this incident to be particularly egregious and severe. Furthermore, I accept the Tenant's evidence that on September 8, 2022, the Landlord made a threatening gesture running his finger across his throat and telling the Tenant that she was "dead". I find there was also an incident where the Landlord and DG were yelling and swearing at the Tenant on camera with the Tenant's sister present, about the tenancy not working out.
- I find the Landlord and DG intentionally left the sprinkler spraying onto the Tenant's patio area on multiple occasions, making the Tenant's furniture items, blanket, and book wet and preventing the Tenant from reading outside. I find the Tenant's hose attachment was thrown into the bush. I find the Landlord and DG had also thrown out the Tenant's belongings from the shed without the Tenant's permission in August 2022. Overall, I find the Tenant's use of the backyard area was unreasonably interfered with by the Landlord and DG.

I find there is insufficient evidence to prove some of the other allegations made by the Tenant, such as stomping from upstairs or the Tenant's claim that the Landlord had entered the rental unit when she was not home. Nevertheless, I find the cumulative effect of the incidents of verbal abuse and interference with the Tenant's use of the backyard amounts to loss of quiet enjoyment for the Tenant and a corresponding reduction in the value of the tenancy.

I accept that the incidents were less frequent or severe in the beginning. I also find the Tenant cannot be said to have been fully deprived of the use of the rental unit and common areas.

Therefore, I estimate the reduction in value of the tenancy at an average of 50% over the five months from May to September 2022.

Pursuant to section 65(1)(f) of the Act, I grant the Tenant a retroactive rent reduction of $50\% \times \$1,200.00 \times 5 \text{ months} = \$3,000.00$.

b. Security Deposit

Section 38(1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security deposit to the tenant with interest, or make an application to claim against the deposit.

Section 38(3) of the Act states that a landlord may retain from a security deposit an amount that the director has previously ordered the tenant to pay to the landlord, and at the end of the tenancy remains unpaid.

I find the Tenant has not provided a forwarding address in writing to the Landlord, such that the Landlord's obligations under section 38(1) of the Act have not yet been triggered.

Furthermore, I find the Landlord was granted a monetary order of \$4,800.00 in the Prior Proceeding, which I accept remains unpaid beyond the end of the tenancy. I find that pursuant to section 38(3) of the Act, the Landlord is authorized to retain the Tenant's \$600.00 security deposit in partial satisfaction of this unpaid monetary order.

I dismiss the Tenant's claim for return of the security deposit without leave to re-apply.

c. Move In and Move Out Costs

I find the parties had mutually agreed to end the tenancy on March 31, 2023. I accept that overall, this tenancy may have been shorter than originally anticipated by the Tenant, since the parties did not end up getting along with each other. However, I find the Tenant's moving costs resulted from the Tenant's decisions to move into and move out of the rental unit, not from any breach of the Act, the regulations, or tenancy agreement by the Landlord. I find the Tenant would still need to pay these costs if she had moved out for different reasons. Accordingly, I dismiss the Tenant's claim for compensation under this part without leave to re-apply.

d. Property Damage

The Tenant provided photos showing a horizontal rip or cut across the fabric of her lawn chairs. However, I find there is insufficient evidence to prove that these damages were caused by the Landlord. I find the Tenant's notes indicate that the first chair ripped right as she sat on the chair. I dismiss the Tenant's claim under this part without leave to re-apply due to insufficient evidence.

e. Mobile Data

I find the Landlord acknowledged that he did cut the Tenant's internet, which was included in the rent. I find the Landlord did not provide any bills or evidence to prove that the Tenant had ordered pay-per-view movies. I find the Landlord breached the parties' verbal tenancy agreement by disconnecting a service that was included in the rent.

I find the \$50.00 claim by the Tenant under this part to be reasonable, though not easily established. According to Policy Guideline 16, in situations where establishing the value of the damage or loss is not as straightforward, one type of damages that may be awarded by an arbitrator is "nominal damages". Nominal damages are a minimal award that may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Pursuant to section 67 of the Act, I grant the Tenant nominal damages of \$50.00 for loss of internet during the tenancy.

f. Cleaning Costs

I find there is insufficient evidence of any agreement between the parties for the Landlord to compensate the Tenant to clean the rental unit at the start of the tenancy.

Moreover, I find there is little evidence regarding the condition of the rental unit at the start of the tenancy. I note that under section 32(1) of the Act, a landlord must 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. I find there is insufficient evidence to demonstrate that the Landlord did not comply with this obligation. I also find the Tenant did not provide evidence to explain what cleaning was required such that it would take 25 hours.

I conclude the Tenant has not provided sufficient evidence to prove that she had suffered a loss for cleaning that resulted from a breach by the Landlord of the Act, the regulations, or tenancy agreement. The Tenant's claim for cleaning costs is dismissed without leave to re-apply.

g. Arbitration Preparation Costs and Filing Fee

The Tenant submitted various receipts into evidence in support of her arbitration preparation costs. However, the Act does not provide for the recovery of costs associated with pursuing a claim against a party to a tenancy, with the exception of the filing fee for the application pursuant to section 72(1) of the Act. Therefore, I dismiss the Tenant's claim for arbitration preparation costs without leave to re-apply.

I note the Tenant included the claim for reimbursement of the filing fee under her claim for damages rather than as a separate claim as is normally done. Records indicate that the Tenant paid the filing fee for the Tenant's application on January 16, 2023. As the Tenant has been partially successful in this application, I grant the Tenant reimbursement of the filing fee pursuant to section 72(1) of the Act.

h. Harassment and Death Threats

The Tenant stated that she has been angry, sad, depressed, and scared due to the Landlord's harassment and threats. The Tenant also stated that the experience has

changed who she is as a person and that she has difficulty trusting others. The Tenant stated that it will take a long time for her to recover.

I note that I have already factored in the behaviours of the Landlord described by the Tenant in granting a retroactive rent reduction for loss of quiet enjoyment above.

I do not find the Tenant to suggest that she had incurred any out of-pocket expenses or financial loss totalling \$9,000.00 due to harassment or threats.

Additionally, the law does not recognize upset, disgust, anxiety, agitation or other mental states that fall short of injury. Compensable injury must be serious and prolonged. I find the Tenant has not provided any medical evidence to prove mental distress or other compensable injury suffered by the Tenant.

Based on the foregoing, I dismiss the Tenant's claim for compensation of \$9,000.00 without leave to re-apply.

Conclusion

The Tenant's monetary claim is partially successful.

Pursuant to sections 65(1)(f), 67, and 72(1) of the Act, I grant the Tenant a Monetary Order in the amount of **\$3,150.00**, calculated as follows:

Item	Amount
Retroactive Rent Reduction for Loss of Quiet Enjoyment (50% × 5 months × \$1,200.00)	\$3,000.00
Nominal Damages for Loss of Internet	\$50.00
Filing Fee	\$100.00
Total	\$3,150.00

The balance of the compensation claimed by the Tenant and the remainder of the claims in the Tenant's application are dismissed without leave to re-apply.

The Landlord's application is dismissed in its entirety without leave to re-apply.

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: July 20, 2023

Residential Tenancy Branch