



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

FINAL DECISION

Dispute Codes AAT, FF, MNDC, O, RR, OPL, MNSD, MNDC, FF, SS, O

Introduction

This final decision is to be read in conjunction with the Interim Decision dated December 17, 2009. This final decision pertains to the tenant's request for monetary compensation for damage or loss under the Act, regulations or tenancy agreement and authorization to reduce rent. All other issues raised by the tenant in the tenant's application and the issues identified in the landlord's application for dispute resolution were addressed in the Interim Decision, including the end of the tenancy.

This decision has been based on the verbal testimony provided by both parties during the teleconference call and documentary evidence provided to me by both parties.

Issues(s) to be Decided

1. Has the tenant established an entitlement to monetary compensation for damage or loss under the Act, regulations or tenancy agreement?
2. Is the tenant entitled to reduced rent?
3. Award of the filing fee.

Background and Evidence

The parties participated in a dispute resolution proceeding on October 23, 2009 and a decision was issued October 26, 2009 (herein referred to as the previous dispute resolution proceeding or decision). In accordance with the findings of the previous dispute resolution decision, the tenant is required to pay rent of \$700.00 on the 1st day

of every month. Since September 2009, the rental unit has been occupied by the tenant and an occupant.

Pursuant to the previous dispute resolution proceeding, the tenant was awarded \$200.00 as compensation for the landlord impeding the tenant's ability to have guests and occupants at the rental unit. Pursuant to the findings and Order provided in the Interim Decision, the tenancy ended December 31, 2009.

In making this application for dispute resolution, the tenant applied for compensation as follows:

Cable	\$ 130.80
Garbage	600.00
Moving costs	880.00
Loss of quiet enjoyment	<u>2,500.00</u>
Total claim	\$ 4,110.80

The tenant subsequently requested return of the \$350.00 security deposit be added to the tenant's claim.

It was the tenant's submission that the landlord cut off the cable supply to the rental unit on September 11, 2009 – the day the landlord was served with the tenant's previous application for dispute resolution. During the previous hearing the Dispute Resolution Officer informed the landlord that the landlord was not permitted to restrict services or facilities without compensation to the tenant. The tenant claimed that he was without cable for approximately two months and that he did not obtain his own cable, but went without or watched television elsewhere. The tenant is seeking compensation for restricted cable services in the amount of \$130.80 for two months.

It was the tenant's submission that garbage removal is a service to be provided as a term of his tenancy; however, the landlord failed to provide sufficient garbage removal services. The tenant explained there are three living units in the dwelling and that there

are only two cans provided for the entire property. The tenant claimed he put the garbage on the curb but that the landlord would return the full garbage can to the tenant's door. Upon enquiry, the tenant explained his claim for compensation related to lost wages for him and the other occupant as they were unable to go to work for periods of time due to fear of encountering skunks and raccoons rummaging through the garbage outside of their door. The claim is also intended to compensate the tenants for time spent cleaning up the garbage mess caused by the animals rummaging through the garbage.

The tenant was requesting moving costs as it was the tenant's submission that the landlord has made living in the rental unit unbearable and the landlord's actions have caused the tenancy to end.

With respect to loss of quiet enjoyment, it was the tenant's testimony that the landlord has breached the Act by:

- Not permitting the tenant to choose his own roommate;
- Interfering with the tenant's and occupant's ability to have guests and insulting guests of the tenant or occupant;
- Entering the rental unit for dishonest reasons and taking photos of the rental unit;
- Not serving the evidence upon the tenant for the previous dispute resolution hearing;
- Issuing an illegal rent increase;
- Alleging the tenant damaged the stove and walls;
- Ignoring repair issues; and,
- Not turning on the heat until early December 2009.

Although the tenant had been previously awarded compensation for the landlord's interference with the tenant's ability to have guests at the rental unit, the tenant

submitted that certain events had not been revealed during the previous dispute resolution proceeding.

The tenant provided documentary evidence that the tenant had made written requests for repairs on November 1, 2009. The tenant requested the landlord treat an ant problem, unclog the bathroom drain, paint the rental unit, repair the oven and provide adequate garbage removal tags.

In response to the tenant's submission, the landlord submitted that the city takes three cans of garbage per week, that the tenant had not put the garbage on the street and that the excessive garbage accumulation was a result of the tenant having more than one can of garbage per week. The landlord submitted that excessive garbage was not an issue when the tenant's former girlfriend living in the rental unit. The landlord submitted animals attracted to the garbage was the tenant's responsibility as the tenant had been putting garbage outside of the garbage can. The landlord denied bringing full garbage cans back to the rental unit.

The landlord did not deny that the cable service was interrupted for two months. The landlord acknowledged that the electrical breaker for the rental unit heaters was off until early December 2009.

The landlord had served the tenant with a 24 hour notice to enter the unit effective November 15, 2009 in response to the tenant's request for repairs; however, the landlord did not enter the unit on that day. The landlord explained that the tenant was not home at that time and the landlord was afraid of the occupant living in the rental unit.

During the hearing, the tenant acknowledged that the drain and oven were repaired on December 10, 2009 and that the ants had been diminishing.

Analysis

Where one party seeks compensation from another party, the party making the application has the burden to prove the claim. The burden of proof is based on the balance of probabilities. In order to satisfy me that the applicant is entitled to compensation, the applicant must show the following test for damages has been met:

1. The other party violated the Act, regulations or tenancy agreement;
2. The violation caused the applicant to incur damages or loss;
3. The quantum of the loss;
4. The applicant did whatever was reasonable to minimize their damage or loss.

Where a party makes a claim for compensation against another party, that party must ensure all of their evidence is presented at the time of that hearing. A party's failure to present all evidence related to a violation cannot be remedied by making subsequent applications unless the party is given leave to reapply. As the tenant has previously been heard and awarded compensation for the landlord impeding the tenant's ability to have guests and visitors at the rental unit, I have not considered this issue again except for any contemporary events that may have restricted the tenant's ability to have guests in the rental unit after the last hearing. As I did not hear of instances of impeded access after the date of the last hearing I make no award for compensation with respect to that claim.

I also find that the tenant has already been heard and a decision been made with respect to the tenant being permitted to have a tenant or occupant in the rental unit and I make no award for that matter.

Section 27 of the Act prohibits a landlord from terminating or restricting services or facilities that are essential or a material term of the tenancy agreement. A landlord may terminate a non-essential or non-material service or facility with 30 days written notice and reduces the tenant's rent by an amount equivalent to the reduction in value of the

tenancy. Upon consideration of the evidence before me, I am satisfied that cablevision was a service or facility to be provided by the landlord under the terms of the tenancy agreement. Since the landlord terminated cablevision for approximately two months, I find the tenant entitled to compensation as claimed in the amount of \$130.80.

Upon consideration of the evidence before me, I am also satisfied that garbage collection was a service or facility to be provided to the tenant. I do not find sufficient evidence that the parties had come to an agreement that the amount of garbage was restricted to one can per week. I also found insufficient evidence that the tenant was obligated to place the garbage out on the street. Therefore, the landlord had the responsibility of removing of the tenant's garbage.

I found the tenant's claim for \$600.00 for compensation for dealing with garbage to be excessive and I find the tenant could have done more to minimize his loss such as requesting the landlord take appropriate action sooner than November 1, 2009 or by purchasing garbage tags himself and requesting reimbursement if the landlord did not comply with requests for garbage removal. Therefore, I award the tenant \$50.00 for inadequate garbage removal.

As I heard that heat was not turned on to the tenant's rental unit until early December 2009 I find the landlord violated the Act by not providing an essential service. In recognition of seasonal temperatures, I find the lack of heat likely decreased the value of the tenancy significantly in the months of October and November 2009. I find lack of heat in the rental unit during these months would devalue the tenancy approximately \$400.00 for these two months; however, without sufficient evidence the tenant made written notification to the landlord that heat was inadequate, I reduce the award to the tenant by one-half to \$200.00.

The landlord has an obligation to repair and maintain a property under the Act. I find insufficient evidence that the landlord was precluded from accessing the rental unit by the tenant or the occupant. With respect to repairs, I am satisfied the tenant attempted

to minimize his loss by making written requests for repairs on November 1, 2009. Upon receiving a request for repairs, the landlord must be afforded a reasonable amount of time to respond. I find the landlord was slow in responding to the tenant's repair requests and that the delay likely devalued the tenancy. I find the landlord took more than a reasonable amount of time to remedy the repair issues. In awarding the tenant compensation for the slow response to the repairs, I do not find the slow bathroom drain likely impacted the tenant significantly and I award the tenant \$25.00 for the landlord's slow response to this request. I find the oven repair more significant to a tenant's ability to use the rental unit as living accommodation and am satisfied that the lack of a working oven likely devalued the tenancy \$100.00.

Under the Act, a tenant is entitled to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, subject only to the landlord's restricted right to enter the rental unit, and use of common areas free from significant interference. The tenant satisfied me that the landlord entered the rental unit for one reason and used the opportunity to take photographs. I find this to be a violation of the tenant's expectation of reasonable privacy. I award the tenant \$100.00 for this violation.

I also heard that the landlord has given the tenant a Notice of Rent Increase that was illegal and a Notice to End Tenancy for Cause that was later set aside; however, the Act provides remedies for such events and I do not find it appropriate to compensate the tenant for the service of such a documents. While repeated and frequent Notices that are without merit may be grounds to find harassment by a landlord, I did not find the issuance of two invalid or ineffective Notices prior to the issuance of the Notice that was the subject of this hearing to meet the threshold of harassment. Therefore, I do not award the tenant compensation for the landlord's issuance of such Notices.

I do not award the tenant moving costs as violations related to loss of quiet enjoyment have been considered and decided upon separately. In addition, the tenant has benefited from tenant's compensation provided under section 51 of the Act with respect to receiving a *2 Month Notice to End Tenancy for Landlord's Use of Property*. Section

51 compensation is intended to compensate a tenant for the inconvenience and costs of having to move. Therefore, in addition to the compensation already awarded with this decision and the section 51 compensation, I find moving costs would be duplicating compensation already awarded or received.

I reject the tenant's submissions that the occupant was unable to settle in and enjoy the rental unit as the occupant does not have rights or obligations with the landlord under the Act. The Act applies to landlords and tenants and any losses by the occupant are between the occupant and the tenant.

As the last month of rent had already been paid at the time of the hearing, I have not considered reducing future rent payable. Rather, violations of the tenant's rights have been recognized with a Monetary Order.

As the tenancy had not ended at the time this application at the time of the hearing, requesting the security deposit was premature and I do not consider this request. Accordingly, the security deposit remains in trust for the tenant, to be administered in accordance with the provisions of section 38 of the Act. The parties are at liberty to make subsequent applications for dispute resolution with respect to the return or retention of the security deposit.

I award the filing fee to the tenant and in accordance with the awards made in this decision, I provide the tenant with a Monetary Order calculated as follows:

Termination of cable	\$ 130.80
Inadequate garbage removal service	50.00
Insufficient heat for October & November 2009	200.00
Inadequate response to requests for repairs	125.00
Lack of reasonable privacy	100.00
Filing fee	<u>50.00</u>
Total award for tenant	\$ 655.80

The tenant must serve the Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

An Interim Decision related to the landlord's request for an Order of Possession and Monetary Order, retention of the security deposit, as well as the tenant's request for repairs and services or facilities has been previously issued and this final decision relates to the tenant's claim for compensation. Both decisions are to be read in conjunction.

With this final decision I have found that the tenant entitled to compensation for loss of quiet enjoyment and termination or restriction of services or facilities in the amount of \$655.80 including recovery of the filing fee.

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: January 14, 2010.

Dispute Resolution Officer