Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, ERP, RR, O

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- 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 emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

During the course of the hearing, it became apparent that the tenant had reversed the landlord's first and last name in her application. When this became apparent, I checked with the parties and they agreed to correct the name of the Respondent in the tenant's application to the name as show above.

The tenant testified that she left the rental unit on September 29, 2013, and removed her belongings from the rental unit by October 12, 2013. She said that she sent her keys to the landlord by regular mail on October 16, 2013. The landlord and her agent said that the tenant has not returned her keys. The landlord's agent stated at one point that he and the landlord consider the tenancy to be ongoing. However, he also conceded that he and the landlord realized when the landlord received the tenant's dispute resolution hearing package that she had left the rental unit. The landlord's agent confirmed that he and the landlord have subsequently obtained possession of the rental unit.

There is undisputed testimony from the tenant that she paid her rent until the end of October 2013. In accordance with section 90 of the *Act*, the tenant's keys allegedly returned by her by mail on October 16, 2013, were deemed to have been received on the fifth day after their alleged mailing, October 21, 2013. I find that this tenancy ended on October 21, 2013, after the landlord received the tenant's dispute resolution hearing package on October 11, 2013, and after the tenant removed the remainder of her belongings from the rental unit by October 12, 2013.

Since this tenancy has ended, I find that the tenant's application for the following are moot points:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

I have severed these aspects of the tenant's applications in accordance with the powers delegated to me under the *Act* and the Residential Tenancy Branch's (the RTB's) Rules of Procedure.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Should any other orders be issued regarding this tenancy?

Preliminary Issues – Service of Documents

The landlord and her agent confirmed that the landlord was handed a copy of the tenant's dispute resolution hearing package by a representative of the tenant on October 11, 2013. I am satisfied that the tenant served the hearing package to the landlord in accordance with the *Act*.

The landlord and her agent confirmed that the landlord received the tenant's written evidence package sent by regular mail on November 8, 2013. However, the landlord and her agent said that they were not able to open the tenant's digital evidence, a flash drive.

In accordance with RTB Rule of Procedure 11.8, I advised the parties that I would not be considering the tenant's digital evidence. The tenant provided no indication that she had complied with any of the following provisions of Rule 11.8:

> *Digital evidence must be accompanied by a written description and meet the time requirements for filing and service established in Rule 3.1 and Rule 3.5.*
>
> *The format of digital evidence must be accessible to all parties. Before the hearing, the party submitting the digital evidence must determine that the other party and the Residential Tenancy Branch have playback equipment or are otherwise able to gain access to the evidence...*

On November 12, 2013, the RTB received a copy of the landlord's 8 pages of written evidence. The landlord's agent testified that he and the landlord sent the tenant a copy of this evidence to the tenant by registered mail on November 13, 2013, two days before this hearing. The agent entered into sworn testimony the Canada Post Tracking Number to confirm this registered mailing. He explained that the landlord delayed sending this evidence because the landlord did not receive the tenant's written evidence until November 8, 2013.

The tenant testified that she has not received the landlord's written evidence. The tenant maintained that there has already been sufficient time afforded to the landlord to provide her written evidence.

Section 90 of the *Act* establishes that documents sent by registered mail are deemed served on the fifth day after their mailing. On this basis, the landlord's written evidence would not be deemed served to the tenant until November 18, 2013, three days **after** this scheduled hearing.

The landlord knew of the tenant's application for dispute resolution since October 11, 2013, but did not take action to send any written evidence to the tenant for consideration at this hearing until two days before this hearing. Under these circumstances, I find that the landlord and her agent delayed taking action that could have been taken to have their written evidence considered until well after the deadline for submitting their written evidence.

Under these circumstances, I advised the parties that I would not be considering the landlord's written evidence as I am not satisfied that it has been served to the tenant in a timely fashion for this scheduled hearing of the tenant's application. However, I did advise the landlord's agent that I would consider sworn oral testimony regarding the issues raised in the landlord's written evidence.

Background and Evidence

This periodic tenancy for a basement rental suite commenced on March 15, 2012. Monthly rent was set at $550.00, payable in advance on the first of each month. The tenant paid one-half month's rent for March 2012. The tenant also paid a $275.00 security deposit on March 15, 2012. The landlord continues to hold that deposit.

The tenant entered sworn oral testimony and written evidence that she had to clean the rental unit and undertake a number of repairs during the course of her tenancy because the landlord's agent refused to take any action. These repairs included:

1. the installation of grit strips on the stairs;
2. the power-washing of cement in front of the rental unit;
3. the installation of a safety bar beside the bathtub;
4. the installation of a sill at the front door to replace damaged gyproc; and
5. repairs to the kitchen sink.

She testified that she did not have written authorization from either the landlord or her agent to undertake these repairs or anything in writing to confirm that the landlord agreed to compensate her for these repairs.

The tenant maintained that she had complained about the moisture level in this rental unit since May 2013, to no avail. Although she never made a written request for repairs to the agent or the landlord, she gave undisputed sworn testimony and written evidence that she did meet with the agent and the landlord to discuss her concerns about the humidity level in her basement suite a number of times. She testified that this situation deteriorated significantly on September 24, 2013, when a large puddle of water formed on the carpet in her rental unit. When this problem recurred on Saturday, September 28 with an even larger puddle, she contacted the landlord to ask that she attend to this matter. The tenant maintained that the landlord and her husband refused to take any action on Saturday, September 28 and Sunday, September 29, when she raised her increasing concerns about this matter with the landlord. She testified that the landlord refused to take any action until an insurance adjuster could look at the situation the following day. The tenant testified that the landlord told her to ask some of the tenant's friends who might be able to help her with this problem.

The tenant testified that she did seek help from friends with a background in building construction and restoration on Sunday, September 29. They assessed the situation and undertook some repairs. She testified that they discovered that the water was likely coming from a water heater and that this problem had been ongoing for some time. She maintained that the landlord's failure to conduct a proper inspection of her concerns had led to her living in the rental unit for many months with an unacceptable level of

moisture in the rental unit. Since she was concerned about the health consequences of remaining in this rental unit, which the landlord refused to properly repair, she left the rental unit on September 29, 2013, and removed her belongings from the rental unit by October 12, 2013.

The tenant applied for a monetary award of $2,500.00. However, she attached the following "Itemized Repayment Request" to the written evidence package the RTB received from her on November 8, 2013, requesting a much higher monetary award:

Item	**Amount**
October 2013 Rent	$550.00
Damage (Security) Deposit	275.00
Property Upgrade	277.50
Moving Expenses	418.25
Compensation (Recovery of Rent from May 2013 until September 30, 2013) 5 months @ $550.00 per month = $2,750.00	2,750.00
Total of Above Items	**$4,270.75**

Although I have considered each of the items listed above in reaching my decision, I advised the parties at the hearing that the maximum monetary Order the tenant could be awarded would be the $2,500.00 identified in her application for dispute resolution. The tenant never amended her application for dispute resolution to increase the amount of monetary award she was seeking beyond the $2,500.00 stated in her original application for dispute resolution.

The landlord and her agent, who dealt with most of the interactions with the tenant, testified that they found no basis to the tenant's concerns about the humidity level in her rental unit. The agent testified that he had an expert come to the rental unit with a "thermographic imaging device" which showed no evidence of excessive humidity in the air and no leakages in the plumbing or the water heater. He and the landlord noted that the tenant had a water bed, which may have been responsible for the water that emerged on the carpet in the rental unit in late September 2013. They said that no recurring leakages have occurred since the tenant vacated the rental unit.

The landlord testified that she visited the rental unit on September 28, 2013 when the tenant complained of water leakage onto the carpet. The landlord said that she could feel the dampness through her socks, but her socks did not become wet from this

dampness. She testified that she told the tenant that she would have an expert come to look at the tenant's complaint about moisture on her carpet the following morning (i.e, Sunday, September 29, 2013), but the tenant said that she had to work and would call the landlord when she returned from work. The landlord testified that the tenant brought her own people in to look into the problem. The landlord and the agent also denied having given the tenant any approval to undertake repairs or that the landlord agreed to reimburse the tenant for repairs or upgrades during this tenancy.

The tenant testified that she checks her waterbed regularly and was certain that the water on the carpet did not originate from her waterbed. She claimed that both the landlord's insurance adjuster and the restoration people she brought in to examine the water problem concluded that the source of the water damage was coming from the water heater and/or heating duct under the gyproc.

Analysis

Section 7(1) of the *Act* establishes that a party who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the other party for damage or loss that results from that failure to comply. In the context of this application, the tenant paid full rent for October 2013, which she believes she is entitled to recover from the landlord.

Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for October 2013, the tenant would have needed to provide her notice to end this tenancy before September 1, 2013. Section 52 of the *Act* requires that a tenant provide this notice in writing.

The tenant gave undisputed evidence that she stopped residing in the rental unit on or about September 29, 2013, and did not remove her belongings from the rental unit until October 12, 2013. The landlord and her agent maintained that they have never received the tenant's keys to the rental unit, although they realized after receiving the tenant's application for dispute resolution that she had ended her tenancy.

I find that the tenant did not comply with the provisions of section 45(1) of the *Act* and the requirement under section 52 of the *Act* that a notice to end tenancy must be in writing. The tenant continued to store her belongings in the rental unit for many days after October 1, 2013, and gave no written indication to the landlord that she was intending to end her tenancy. As noted at the hearing, both landlords and tenants are required under the *Act* to provide written notices to end a tenancy.

The only way that this tenancy could be considered to have ended before October 1, 2013 and the tenant not be held responsible for rent for October 2013, would be if I were satisfied that the landlord's failure to maintain the rental property were so excessive that it constituted a breach of the tenancy agreement. Based on the evidence before me, I make no such finding as I am not at all satisfied that the tenant has demonstrated that the landlord was negligent with respect to her responsibilities to maintain the rental unit in accordance with the following provisions of section 32 of the *Act*:

> ***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...*

For the reasons outlined above, I dismiss the tenant's application for a monetary award to compensate her for the rent she paid to the landlord for October 2013, without leave to reapply.

As I find that the tenant ended this tenancy without authorization to do so under the *Act*, I also dismiss the tenant's claims for the various expenses she incurred at the end of this tenancy, including her claim for recovery of her moving expenses, again without leave to reapply. I also dismiss the tenant's application to cover expenses she incurred to compensate friends who helped her inspect and repair damage to the rental unit without leave to reapply. I do so as I am not satisfied that the tenant has established that these expenses qualify under all of the following conditions regarding emergency repairs required under section 33(3) of the *Act*:

> ***33*** *(3) A tenant may have emergency repairs made only when all of the following conditions are met:*
>
> > *(a) emergency repairs are needed;*
> >
> > *(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;*
> >
> > *(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs...*

In this regard, there is conflicting evidence as to whether the repairs allegedly undertaken by the tenant were necessary and whether the tenant gave the landlord reasonable time to conduct these repairs herself.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. As the party initiating this monetary claim, the tenant bears the burden of proof regarding her claim for actual losses she incurred and her claim that the value of her tenancy was devalued by the landlord's actions or omissions.

I dismiss the tenant's application for compensation for repairs and upgrades she undertook during the course of this tenancy without leave to reapply. I do so as I am not satisfied that she obtained any written authorization from the landlord or her agent that she would be compensated for these repairs or upgrades. In this regard, I also note that there is no evidence that the tenant sought the recovery of a number of these expenses at the time.

Section 65(1)(f) of the *Act* allows 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." Section 65 of the *Act* reads in part as follows:

> ***65*** *(1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:...*
>
> *(c) that any money paid by a tenant to a landlord must be*
>
> *(i) repaid to the tenant,...*
>
> *(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;...*

Although I have given the tenant's evidence and sworn testimony careful consideration, I find that the tenant has not demonstrated to the extent required that she did in fact suffer a loss in the value of her tenancy due to any failure of the landlord to provide her with the services and facilities she undertook to provide to the tenant at the commencement of this tenancy. In coming to this decision, I recognize that the tenant believes that she was affected by an elevated moisture level in the rental unit and produced some evidence to that effect. However, I find that the landlord and her agent provided equally strong sworn testimony regarding the state of the humidity in the tenant's rental unit, which they maintain was not unduly elevated. As the tenant bears the burden of proof regarding her claim and she has not done so, I dismiss the tenants' claim for a reduction in the value of her tenancy for the months from May 2013 until September 30, 2013, without leave to reapply.

As the issue of the tenant's eligibility to obtain a return of her security deposit was not identified in her application, this issue is not before me. While the tenant included her new mailing address in some of her written evidence, I find that this mechanism of providing her forwarding address in writing is not sufficient notice under these circumstances. At the hearing, I ordered the tenant to provide her current mailing address to the landlord in writing if she is seeking a return of her security deposit. Section 38 of the *Act* places a responsibility on the landlord to either return her security deposit in full within 15 days of receiving the tenant's forwarding address in writing or to apply for dispute resolution to retain any portion of that deposit within 15 days.

Conclusion

I dismiss the tenant's application without 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: November 18, 2013

Residential Tenancy Branch