



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC RP RR

Introduction

This hearing convened on October 24, 2014 for 82 minutes to deal with an Application for Dispute Resolution filed on September 2, 2014, by the Tenant. The hearing time expired and the matters were reconvened to December 9, 2014.

The parties arrived 17 minutes late to the October 24, 2014 hearing as they were both involved in a different dispute resolution hearing that was scheduled for the same date to hear matters based on an application filed by the Tenant's witness A.J. That file number is listed on the front page of this decision. The Arbitrator in that matter found that A.J. was not a tenant and that R.D. was the Tenant for the entire rental house.

The Tenant's application was for an Order to Cancel a Notice to end tenancy for landlord's use; to obtain a Monetary Order of \$400.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to Order the Landlord to make repairs to the unit, site or property; and to allow the Tenant reduced rent for repairs, services or facilities agreed upon but not provided.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. The Tenant had two witnesses attend the October 24, 2014 session, as indicated on the front page of this decision.

Each person gave affirmed testimony and confirmed receipt of evidence served by the other. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

- 1) Has the Tenant proven entitlement to monetary compensation?
- 2) Has the Tenant vacated the rental unit?

Background and Evidence

During the October 24th, 2014 hearing, the Tenant submitted evidence pertaining to the terms of her tenancy agreement and repair issues relating to a broken dishwasher, a new stove, the washer and dryer, and tiles for the laundry room. At the expiration of the October 24th hearing, the Tenant was ordered to submit to the Residential Tenancy Branch (RTB) copies of her original tenancy agreement and a copy of her intent to rent form.

At the outset of the December 9th, 2014 hearing the Tenant stated that she could not find her original tenancy agreement and the copy of the other documents were mailed to a previous RTB address, which have since been returned to the Tenant. The Tenant submitted that she has since moved out of the rental unit.

The Landlord testified that the Tenant and all occupants vacated the rental property on October 31, 2014, without notice.

The Tenant testified that her tenancy began July 1, 2014 and that they did not occupy the rental unit early. She argued that the rental unit had not been properly prepared, cleaned, or repaired prior to her moving into the unit. The Tenant stated that she now seeks \$400.00 compensation which is comprised of \$105.00 for ten hours of cleaning she had to do to the rental unit; \$30.00 for labour to clean the carpets in her daughter's bedroom; \$70.00 for having to be without a washer for a few days and without a dryer for 25 days; and \$195.00 for not having a working dishwasher.

In response to the cleaning and carpeting cleaning claim, the Landlord submitted that the Tenant requested to move into the rental unit early, on June 29, 2014, and in exchange for being granted early occupancy without being charged prorated rent, the Tenant agreed to clean and prepare the rental unit. The Landlord pointed to page six of the tenancy agreement that had been provided in her evidence where the parties initialled the paragraph that states:

Tenants agree to prepare unit for rental in exchange for early move-in.

The Landlord testified that they had provided the Tenants with all the required cleaning materials which included use of the carpet cleaner, brooms, mops, and all of the required cleaning supplies, in exchange for the Tenants doing the cleaning and being allowed to move into the unit early.

The Landlord testified that the Tenants notified them on July 2, 2014 that there was a problem with the washing machine and that she attended the rental unit within a couple

of hours to remedy the problem. She said that she had told the Tenant's daughter that she would arrange for repairs and that the daughter became very upset with having to wait for repairs; so the Landlord gave the daughter \$20.00 so that she could go to a laundry mat. The Landlord arranged to have a different washing machine delivered on July 4, 2014.

The Landlord stated that they determined that there were problems with the electrical system in the house, which is why the dryer was not working. They arranged for an electrician to attend to the required upgrades and the Tenant worked directly with the electrician to allow access to the unit. The repairs were completed before the end of July 2014.

The Landlord argued that the Tenant told them that there was no rush with getting the dryer repaired because they normally hung their clothes outside on clotheslines because they did not want to pay for high electricity costs to operate a dryer. The Landlord pointed to photographs in her evidence, that were taken in October 2014, which displayed clothing still being dried on the outside lines, even though the dryer had been repaired several months earlier.

The Landlord pointed to page 1 of the tenancy agreement, item # 3 which clearly indicates that the tenancy did not include a dishwasher. The Landlord submitted that they had initially told the Tenant they would provide a working dishwasher for her but that the Tenant told them that she would much prefer a new stove, so that is why the tenancy agreement did not include a dishwasher.

The Tenant denied moving into the rental unit early, and despite agreeing that she had initialled and signed the tenancy agreement, she denied agreeing to clean the rental unit and denied negotiating a new stove instead of a working dishwasher. The Tenant argued that the items on the clothesline shown in the Landlord's photographs were all items that could not go in a dryer.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

In order to meet the burden of proof, all four criteria must be met.

In this case it was undisputed that the rental unit required cleaning, that the washer and electrical service to the dryer required repair, and that the dishwasher was non-operational. What were in dispute were the terms of the tenancy agreement and what verbal agreements had been made.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

In absence of evidence to contrary, I relied upon the written tenancy agreement, that was signed by the Tenant and the Landlord, which stated that the "Tenants agree to prepare unit for rental in exchange for early move-in". The tenancy agreement provided that a washer, dryer, fridge, stove, carpets, and a hot plate were included; however, the tenancy agreement does not provide that a dishwasher was included.

Based on the above, I accept the Landlord's submission that the Tenant negotiated the aforementioned terms, prior to move in, as indicated by the written agreement. Accordingly, I find the Tenant provided insufficient evidence to prove the Landlord breached the Act by not cleaning or preparing the rental unit or by not providing a working dishwasher. Therefore, the Tenant has not met all four criteria for the test for damage or loss, as listed above, and the claims for cleaning and non-working dishwasher are dismissed, without leave to reapply.

Section 32 of the *Act* requires a landlord to 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.

The Tenant's evidence supports that they requested repairs to the washer and dryer. The undisputed evidence was that the Landlord immediately attended to the issues with the washer and provided the Tenants \$20.00 to pay for laundry until the replacement washer was provide two days later. The issue with the dryer was attended to and repaired within two weeks of the electrician gaining access to the unit, which was 25 days after the tenancy started. Therefore, given the scope of the work involved, and the Landlord's response to the matters, I find the Landlord initiated repairs and ensured those repairs were completed within a reasonable amount of time, once they were notified of the problem.

Based on the above, I find there is insufficient evidence to prove the Landlord breached the Act. Rather, the evidence supports the Landlord did what was reasonable to compensate the Tenant and enact repairs. Therefore, I dismiss the remainder of the Tenant's claim for monetary compensation, without leave to reapply.

As this tenancy ended when the Tenants vacated the unit on October 31, 2014, I find the remainder of the Tenant's application to be moot, as those issues pertain to a tenancy that is ongoing.

Conclusion

I HEREBY DISMISS The Tenant's claim, 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: December 09, 2014

Residential Tenancy Branch

