Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

Both parties (the landlord through an agent who is hereafter called 'the landlord') attended the hearing and the landlord confirmed service of the tenant's Application for Dispute Resolution by registered mail but not of an amendment. The tenant said they delivered the Amendment personally to a person at the landlord's residence. The tenant had listed 6 items of claim on her Application and at the outset of the hearing, I asked her if all items were still being claimed. She said she was not applying to cancel a Two Month Notice to End Tenancy (first item) and withdrew her claim for the return of her security deposit ((item 5). She said she only wanted personal property back if the landlord still had it but she thought it was gone (item 6). The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for the remaining items and orders as follows:

a) A Monetary Order as compensation for loss and emergency repairs
b) A Monetary Order as compensation for shared utilities in their name;
c) To return personal property; and
d) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that they entitled to compensation as claimed and to recover the filing fee.

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in December 2011 on a fixed five year term expiring December 31, 2016, rent was $1200 increasing to $1250 in June 2016 plus $30 for water. In the lower box of her Application, the tenant sets out a claim for a refund of utilities as follows:

- Half of gas bill: $451.28 (landlord's share)- December 1, 2016 to March 28, 2017
- $120 for water bill –full cost for same period
- Electric Bill: $288.53 which is one third of the cost to the landlord as the landlord's washer and dryer was on the electric bill in the tenant's name. The remainder of electric used was on separate meters.

She claimed $910 as a monetary order but then said in the lower box her total for the Application was $4500. In her amendment filed June 19, 2017, she adds other fees including" $2500 on move-out" for a total of $3898.23. The landlord's agent said they

had received no copy of this amendment but said she would do her best to comment on each claim. Much of the tenant's claim is based on the flood resulting from a burst hot water tank in March 11, 2017. She said it soaked the garage which they rent and where she had stored her boxes of goods to move out on March 31, 2017. She said she needed to get help and pay some men. She said she is unable to do any physical work due to an injury suffered on the property for which she is pursuing a civil claim.

She claims as follows:
$157.50 x 3 for each of three young men to help her move the sodden boxes upstairs
$450 for loss of 6 hours wages for her husband who had to take time off his business. She said he earns about $2250 for 80 hrs work every two weeks. When I pointed out that was only $28.12 an hour and he was claiming $75 an hour, she said "Whatever".
$53.18 for the use of a wet dry vac to clean due to the emergency.
$2500 : two month Notice to vacate for personal use

The landlord said she took over as agent on March 31, 2017. At that time, the tenants in the downstairs suite adjacent to the water tank had had no incidence of a water problem. She said she saw no sign of water damage in the garage either, no efflorescence and some old cardboard boxes in the back of the garage were dry. She does not believe water entered the garage and soaked tenant boxes. She said the water tank did rupture and was replaced immediately. The tenant said the house is a bit off level, the water tank on their side erupted and the water went into the garage causing the damage. She had her helpers move the wet boxes upstairs and later they took them to dump. The landlord said the basement suite is on the same level, the tanks are in a closet with a threshold of a few inches, the natural path of any water would have been into the basement suite and there was no evidence of water. She said there was a great deal of garbage left in the house and no sign of wet boxes. She finds it improbable that the tenants would not have removed some of the other garbage if they had done a dump run as they said.

The landlord pointed out in a previous hearing in December 2016 that the matter of the utilities had all been settled and the tenants got 3 months free rent.

In evidence is the original application, the amendment and a copy of a damage claim of the landlord. The agent said it was to illustrate the condition that the house had been left in and advised that the landlord has an Application to be heard in November 2016. At the conclusion of the hearing, the tenant suddenly asked what about her claim for rent because the landlord did not occupy the property. I advised her that there was insufficient notice of this claim. She did not specify it on her original application or on her amendment so the landlord did not have opportunity to reply to this claim.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, 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.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the tenant as applicant to prove on the balance of probabilities their claims. In respect to their claim for utilities, I find they settled this claim in a hearing on December 16, 2016 which the arbitrator recorded (in part) as follows:

a. *The Tenants shall be entitled to remain the in the rental unit from December 1, 2016 to March 31, 2017 rent free in considerations for their claims set out in this application and their entitlement to the equivalent of one month rent under section 51 of the Act for being served the two month Notice to End Tenancy.*
b. *The Tenants shall continue to pay the gas and electric bill which is in their name to the utility companies and shall pay the landlord $30 per month for the water bill starting December 1, 2016 and on the first day of each month thereafter until the tenancy ends. .*
c. *Subject to this settlement Tenants discharge and release the landlord from all claims made in this Application for Dispute Resolution.*

Based on this settlement agreement, I find all matters regarding utility payments were settled so it is res judicata as already decided. I dismiss this portion of the tenant's claim in its entirety.

In respect to compensation for labour and items related to the flood, I find insufficient evidence that the landlord violated the Act or tenancy agreement as the water heater was fixed immediately. Section 33 of the Act requires a tenant to notify the landlord if emergency repairs are necessary. I find insufficient evidence that the tenant ever notified the landlord of the necessity for help in removing boxes due to the emergency or for clean up. In fact, I find insufficient evidence that there was a flood into the garage. The tenant provided no photographs or independent eye witness accounts of a flood into the garage. I find the agent's evidence more credible as she detailed looking for any signs of a flood into the garage and finding none and that there was no evidence of the water going into the adjacent basement suite on the same level. I dismiss this portion of the tenant's claim. I dismiss claims for processing the application also as awards for costs are limited to the filing fee under section 72 of the Act.

In respect to the tenant's last minute announcement of claiming a rent refund for the landlord not occupying the property, I find the landlord was not served with notice of this claim. I find the tenant's original Application was ambiguous and there is insufficient evidence that the landlord was served with her amendment (which is also ambiguous). I give the tenant leave to reapply for this rent refund if she feels entitled to it. She might request a cross application to the landlord's application to be heard in November 2017.

Conclusion:
The Application of the Tenant is dismissed without recovery of the filing fee due to lack of success. I give them leave to reapply for a refund of rent pursuant to section 50(2) of the Act if applicable.

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: June 28, 2017

Residential Tenancy Branch