Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC ERP LRE OLC PSF RP MNDC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, dated July 17, 2017, which was amended by an Amendment to an Application for Dispute Resolution, received at the Residential Tenancy Branch on September 6, 2017 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order cancelling notice to end tenancy for cause;
- an order that the Landlords make repairs for health or safety reasons;
- an order suspending or setting conditions on the Landlords' right to enter the rental unit;
- an order that the Landlords comply with the *Act*, regulation, or the tenancy agreement;
- an order that the Landlords provide services or facilities required by the tenancy agreement or law;
- an order that the Landlords make repairs to the unit, site, or property; and
- a monetary order for money owed or compensation for damage or loss.

The Tenants were both in attendance at the hearing. A.K. attended the hearing on her own behalf, and on behalf of the corporate Landlord. A witness for the Landlords, G.B., also provided testimony. All parties in attendance provided a solemn affirmation.

On behalf of the Tenants, J.T. testified the Landlord was served with the Application package, which included digital evidence, by registered express mail, on July 17, 2017. A.K. acknowledged receipt on July 19, 2017. I find the Landlord received the Tenants' Application package on that date.

In addition, J.T. testified he served the Landlords with an Amendment to an Application for Dispute Resolution, and further digital evidence, on September 6, 2017 (the "Amendment"). On behalf of the Landlords, A.K. acknowledged receipt on or about that date. I find the Amendment and digital evidence were received by the Landlords.

The Landlords submitted documentary evidence in response to the Tenants' Application. A.K. confirmed it was submitted to the Residential Tenancy Branch on September 26, 2017, but was not served on the Tenants. According to A.K., she was on vacation and did not have time to respond earlier. I find the documentary evidence submitted to the Residential Tenancy Branch by the Landlords does not accord with Rule of Procedure 3.15 which requires that the other party receive evidence not less than seven days before the hearing. As a result, it not been considered further in this Decision.

No further issues were raised with respect to service or receipt of the above documents. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The parties were specifically reminded during the hearing to refer me to documentary and digital evidence upon which they intended to rely. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

During the hearing, the Tenants confirmed that they vacated the rental unit on September 5, 2017. Accordingly, it is only necessary for me to hear the Tenants' request for a monetary order for money owed or compensation for damage or loss. The remainder of the Tenants' claim (CNC, ERP, LRE, OLC, PSF, RP) is dismissed without leave to reapply.

Issue to be Decided

Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed the tenancy began on October 1, 2015, and ended when the Tenants vacated the rental unit on September 5, 2017. Rent in the amount of $933.00 per month was due on the first day of each month. The Tenants paid a security deposit of $440.00.

The Tenants' claim was summarized on a Monetary Order Worksheet, dated September 6, 2017. First, they claimed $3,255.00 for loss of quiet enjoyment of the rental unit. In support, J.T. testified that in the summer of 2016, water was entering the Tenants' rental unit, apparently due to a leak in the roof. The Tenants advised the Landlords and were told it would be dealt with. According to J.T. tarps were placed on the roof and the Tenants were then told the problem would be fixed the following year. In the winter of 2016, the tarps blew off and the leak became worse. Water was noted to be leaking into the rental unit. J.T. testified that a roofer came to inspect the roof and that he was advised the repairs would occur in spring 2017.

Further, J.T. submitted that the Landlords did not take reasonable steps to resolve the problems identified by the Tenants. As a result, he stated that moisture, humidity, and "black mold" were observed in the rental unit. The rental unit smelled bad. Further, J.T. testified that he had health issues in the past that were exacerbated by the presence of mold. He stated that he couldn't breathe and even threw up.

In reply, A.K. confirmed that a roofer put tarps on the roof and that a roof repair takes time. She also advised that tenants with requests for maintenance are required to submit a repair request. However, these documents were not received from the Tenants. A.K. also submitted that the Tenants have not demonstrated that they suffered a loss of quiet enjoyment.

The sole witness for the Landlords, a plumber, testified that he was asked to attend the rental unit due to a complaint about a leak from the occupants of the unit directly below the Tenants. As part of the investigation, a section of drywall outside the Tenants' rental unit was removed. It was discovered that the pipes were corroded and the presence of dust was observed. This work took place in early July 2017. In response, J.T. referred me to a video clip submitted with the Tenants' digital evidence, which depicted the interior of the wall. The Tenants did not refer to any corresponding photograph of the Tenants' bathroom or rental unit.

Second, the Tenants claimed $2,790.00 for aggravated damages. J.T. testified that despite asking the Landlords to deal with the issues raised and giving advice about what needed to be done, the Landlords simply stated the Tenant was wrong. In addition, J.T. submitted that a meeting took place in the rental unit and the roofer suggested the Tenants live in the living room until repairs are complete. J.T. indicated that they wished to move but could not afford to do so, having fallen on difficult financial times, until they were able to borrow $500.00 from a friend.

In reply, A.K. stated the Landlords did not agree with this aspect of the Tenants' claim. She testified that J.T. wrote on the wall in the hallway outside the Tenants' rental unit, did not give sufficient notice to end the tenancy, left without paying rent for the month of September 2017, and that she was unable to re-rent the unit because of the smell of marijuana in the unit.

Finally, the Tenants claimed $500.00 for moving costs. J.T. submitted the Tenants were forced to move because of the living conditions in the rental unit and the Landlords' failure to address their concerns.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act.* 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 what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Tenants' claim for $3,255.00 for loss of quiet enjoyment, section 28 of the *Act* states:

> *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
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> *(a) reasonable privacy;*
> *(b) freedom from unreasonable disturbance;*
> *(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
> *(d) use of common areas for reasonable and lawful purposes, free from significant interference.*
>
> [Reproduced as written.]

Policy Guideline #6 elaborates on the meaning of a tenant's right to quiet enjoyment. It states:

> *The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may for a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:*
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> - *entering the rental premises frequently, or without notice or permission;*
> - *unreasonable and ongoing noise;*
> - *persecution and intimidation;*
> - *refusing the tenant access to parts of the rental premises;*
> - *preventing the tenant from having guests without cause;*

- *intentionally removing or restricting services, or failing to pay bills so that services are cut off;*
- *forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,*
- *allowing the property to fall into disrepair so the tenant cannot safely continue to live there.*

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

…

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment; however, it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

[Reproduced as written.]

I find there is insufficient evidence before me to conclude the Landlords' alleged failure to address the Tenants' concerns resulted in a loss of quiet enjoyment as contemplated under Policy Guideline #6. In particular, there was insufficient evidence of frequent and ongoing interference. I also note it was always available to the Tenants to make an application for dispute resolution to request an order that the Landlord complete repairs to the rental unit. They did not, but elected to remain in the rental unit despite conditions they say persisted for more than a year. This aspect of the Tenants' claim is dismissed.

With respect to the Tenants claim for $2,790.00 for aggravated damages, Policy Guideline #16 states:

> *In addition to other damages and arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.*
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> - *The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.*
> - *The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.*
> - *They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.*
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> [Reproduced as written.]

After careful consideration of the Tenants' submissions, I find there is insufficient evidence before me to conclude they are entitled to an award for aggravated damages as contemplated under Policy Guideline #16. First, I find there is insufficient evidence before me that the Tenants suffered a loss as a result of a deliberate or negligent act or omission of the Landlords. The Tenants' Application appears to be based on their assertion that there were problems in the rental unit that were not adequately addressed by the Landlords. On behalf of the Landlords, A.K. testified that issues were being

addressed but roof repairs take time. Second, I note that no monetary award is being made as a result of the Tenants' Application; therefore, there is no award to augment. Finally, I note that Policy Guideline #16 confirms aggravated damages are "rarely awarded". I find this is not an appropriate case for an award of aggravated damages.

With respect to the Tenants' claim for $500.00 for moving costs, I find the Tenants vacated the rental unit voluntarily on September 5, 2017, despite a pending hearing to address their request to cancel a notice to end tenancy for cause. I find there is insufficient evidence before me to conclude the Landlord should bear the Tenants' moving expenses, which were not substantiated by documentary evidence during the hearing. This aspect of the Tenants' Application was dismissed.

Conclusion

The Tenants' Application is dismissed, 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: September 28, 2017

Residential Tenancy Branch