



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR MNR MNDC MNSD ERP RP PSF

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for loss, emergency repairs, or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

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

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

The tenant indicated at the beginning of the hearing that he had moved out on June 30, 2017, on the effective date of the 10 Day Notice served to him on June 17, 2017. As this tenancy has now ended, the tenant's non-monetary portion of his application was withdrawn.

Preliminary Issue—Amendment to Tenant's Application

The tenant served the landlord with an amendment to his monetary application on August 11, 2017, increasing the monetary claim to \$3,117.37. The tenant served the package by placing it in the landlord's mailbox. The landlord testified in the hearing that he did not have an opportunity to review the amendment or prepare his response to it before the hearing.

Rule 4.6 states the following:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the respondent(s) not less than 14 days before the hearing.

It was undisputed that the tenant had placed the amendment and associated documents in the landlord's mailbox on August 11, 2017, less than 14 days before the hearing. The landlord testified in the hearing that he did not have the opportunity to review or respond to the amendment.

As this amendment was not received in accordance with RTB Rule 4.6, and the respondent has the right to review and respond to the amendment and supporting evidence, the package will be excluded and not considered as part of this application.

Preliminary Issue-Tenant's Forwarding Address

This month-to-month tenancy began sometime in 2012, with monthly rent set at \$1,080.00. The landlord collected, and still holds, a security deposit the amount of \$475.00. The tenant moved out on January 31, 2017. The tenant stated in the hearing that the landlord was not provided with the forwarding address in writing.

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

In this case the tenant has applied for the return of the security deposit, but admitted in the hearing that the landlord was not provided with their forwarding address in writing. Accordingly I dismiss the tenant's application with leave to reapply. The tenant must provide their forwarding address to the landlord in writing, and the landlord must, within 15 days of the receipt of that address, either return the tenant's security deposit, or make an application for dispute resolution. If the landlord fails to comply with section 38 of the *Act*, the tenant may reapply. Liberty to reapply is not an extension of any applicable limitation period.

Issue(s) to be Decided

Is the tenant entitled to a monetary compensation for money owed under the *Act*, regulation, or tenancy agreement?

Background and Evidence

This tenancy was to commence on June 1, 2017 as per the written tenancy agreement, with monthly rent set at \$1,250.00. The landlord had collected a security deposit of \$625.00 from the tenant, and this security deposit remains in the possession of the landlord.

Both parties in the hearing acknowledged that the tenant was given access on May 24, 2017. The tenant testified that a move-in inspection was done in May 2017 with the landlord, while the previous tenants were still residing at the rental home.

The tenant testified that had an oral agreement with the landlord to do renovations, and was told to submit receipts for reimbursement. The tenant testified that he discovered upon moving in that the home was not in the condition that he had expected, and that there were “hundreds of holes in the walls”, cigarette stains and burns, and overall the home was in “rough shape”. The tenant testified that there was also water damage, which he had attempted to paint over. Two weeks into the tenancy, the tenant realized the damage, which included mold and water damage as well as holes and cracks in the walls, was excessive, and he felt the landlord failed to disclose the extent of the damage to him. The tenant testified that the closet was not finished, the insulation was hanging down, and the windows were painted shut. The tenant testified that the home was dangerous as flooring was used as kitchen countertops, and contained sharp edges.

The tenant testified that he called the landlord in the middle of June 2017 to discuss the amount of damage, which he originally thought just required cleaning and repairs. The tenant testified that the landlord then agreed to compensate him \$500.00 plus pay for the supplies upon provision of the receipts. The tenant testified that the landlord later retracted his offer and said that he “would consider”. The tenant testified that due to the amount of repairs required he had never moved in, and he was still paying rent to live at his previous home. Due to the financial burden of maintaining two rental homes, the tenant testified that he had to take out a loan to pay for the renovations. The tenant testified that he had paid \$625.00 in rent to the landlord, in addition to the \$625.00 security deposit for the tenancy. The tenant received a 10 Day Notice to End Tenancy from the landlord on June 17, 2017, and moved out on the effective date of the 10 Day Notice, June 30, 2017.

The tenant is seeking a monetary order of \$986.52 in compensation for the supplies plus reimbursement for the \$625.00 paid for this tenancy. The tenant provided, in evidence, receipts to support the value of the supplies spent for the renovations.

The landlord testified in this hearing that both parties completed a walk through inspection at the beginning of this tenancy, and that there was a mutual agreement that the tenant would be given access to the home before the beginning of this tenancy in order to clean, perform

renovations and touch-ups. The landlord testified that the unit was vacant on May 23 and 24, 2017 when the walk through was completed. The landlord testified he did indicate that he may pay for some paint supplies, but that no agreement was made in regards to compensation. The landlord further testified that he had not received any communication from the tenant in regards to the issues with the tenancy until June 12, 2017.

Analysis

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 or 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. In this case, the onus is on the tenant to prove, on a balance of probabilities that the landlord had failed to comply with the *Act* and tenancy agreement, which contributed to the tenant's loss.

Section 65(1)(c) and (f) of the *Act* allow 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."

Although it was undisputed by both parties that the tenant had undertaken renovations at his own expense during this tenancy, the landlord disputes that any agreement was ever reached to compensate the tenant for this work. The tenant did not provide any written agreements or witness statements to verify that an agreement had been reached, and what the terms of this agreement were.

It was undisputed by both parties that it was not until on or about June 12, 2017 when the tenant had communicated to the landlord that the extent of the renovations required exceeded the tenant's expectations. Although I sympathize with the tenant that the condition of the home did not match his original expectations, the tenant did not provide sufficient evidence to support that the landlord failed to comply with the *Act* and tenancy agreement in any way. Furthermore the tenant did not provide sufficient evidence to support any agreement made between both parties for compensation.

Although he tenant did provide some receipts for the costs that he had incurred as part of the renovations he had undertaken. I find there is insufficient evidence for me to make a finding that the landlord had failed to meet his obligations as required by the *Act*, and on this basis I am dismissing the tenant's application for monetary compensation.

Conclusion

The tenant's application for the return of his security deposit is dismissed with leave to reapply.

The tenant withdrew the non-monetary portion of his application as this tenancy ended on June 30, 2017.

The remaining portion of the tenant's monetary 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