Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

Both parties made Applications and attended the hearing and gave sworn testimony. The landlord made two applications. The 10 Day Notice to End Tenancy is dated October 3, 2017 to be effective October 13, 2017. The tenant confirmed the Notice was served by posting it on the door. The tenant /applicant gave evidence that they served their Application for Dispute Resolution and the landlord agreed they received it. The tenants agreed they received one application from the landlord by express post but did not receive the other. I find the Notice to End Tenancy, one application of the landlord and the application of the tenant were legally served for the purposes of this hearing. However, I find the tenants had notice of the claims in the second application and the Notice of Hearing so I find the landlord's second application was sufficiently served pursuant to section 71 of the Act for the purposes of this hearing. Firstly, the tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

a) To cancel the Notice to End Tenancy for unpaid rent;
b) To suspend or set conditions on the landlord's entry into the suite;;
c) To refund an illegal rent increase pursuant to section 43;
d) To obtain compensation for losses; and
e) To recover filing fees for this application.

The landlord applies on one application pursuant to the Act for orders as follows:

f) To obtain an Order of Possession;
g) For a monetary order for unpaid rent;
h) To retain the security deposit to offset the amount owing; and
i) To recover filing fees for their application.

The landlord applies on his second application to recover damages of $5955.

Preliminary Issue:

Both parties agreed the tenant vacated the unit but differ on the date, the tenant saying they were gone October 31, 2017 but the landlord saying there were still items in the house on November 3, 2017 when they did the final inspection. An Order of Possession is no longer required.

Issue(s) to be Decided:

Is the landlord entitled to a monetary order for unpaid rent and damages? If so, in what amount?

Has the tenant proved on the balance of probabilities that they received an illegal rent increase, the amounts of the increase and the amount of refund, if any, to which they are entitled? Have they proved they suffered losses or significant disturbance of their reasonable enjoyment due to act or neglect of the landlord? If so, to what amount of compensation have they shown entitlement?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. This was a lengthy hearing for three files were involved with many disputed issues. While I have considered all the oral testimony and the submitted documents, not all of them are referenced in the decision.

The undisputed evidence is that the tenancy commenced September 1, 2015i, rent was currently $2950 but increased to $3050 effective September 1, 2017. The tenants said they agreed to the increase because they did not know there were formal procedures to increase rent. They signed a new tenancy agreement. A security deposit of $1475 was paid August 15, 2015. The landlord served the Notice to End Tenancy for no rent was paid for October 2017. It was never paid.
The landlord claims as follows:
$994.56 for cleaning
$551.25 for changing locks because keys were not returned
$4,410.00 for painting.
$3050 for unpaid rent in October 2017.
He provided professional receipts in evidence.

The tenant claims as follows:

1. $550 for replacement cost of items damaged by the Restoration company
2. $250 for past labour in cutting up a fallen tree and disposing of it. They said the landlord had agreed to them doing the work but did not agree to or offer compensation.
3. $375 for their part of the shared cost of hot tub parts and repair. They said the landlord had paid half but never agreed to pay their half.
4. $1525 reimbursement for half of September rent of $3050
5. $2950 waiver of rent for October 2017
6. $2000 for loss of their peaceful enjoyment and privacy.
7. $400 for having to eat at restaurants. No invoices available.

The tenants described how they had rented a home with three levels. On September 16, 2017, the dishwasher broke and water flooded under the hardwood floors and also rained into the lower level where some of the occupants were living. They said it impacted 70% of the basement area but actually rendered the whole basement unliveable due to the resulting wet and rapid growth of mould. The basement is about 1000 sq. ft. and the upper two floors about 2000 sq. ft. The main floor was also impacted as they lost the use of kitchen, eating area, living and dining area. They said the landlord delayed about 4 days in getting the problem addressed. Work started with a Restoration Company about September 18, 2017 and they testified that they denied access to some persons on October 18, 2017 because the restoration was finished. They said the landlord's people could wait a week until they moved out.

The landlord said he acted immediately when informed of the flood. He did not know the extent of the problem and sent over a plumber to look at the dishwasher. He also contacted the insurer but it was a Saturday and they could not do anything until the Monday when they had a restoration company attend the premises. The tenants said the landlord did not want the insurer to know he was renting to them so they had no means to communicate with the Restoration Company or to find out their schedule and have them protect their belongings. They had to remove family photos and not have their children present when insurance agents attended. The Restoration Company also created a lot of dust and loud noise until 9 p.m. or 11 p.m. at night. This was a significant inconvenience and disturbance of their peaceful enjoyment of the property.

The tenants also state the landlord required them to leave a key under a mat for the Restoration Company but he allowed others such as a painter to use the key to enter their home. They were locked out of their home twice, once because the painter took the key and another time because a lockbox was put on the door and the tenant was not given the right code.

The landlord agreed the insurer paid him $2900 to cover the cost of his mortgage during the month of repair work but he said there was no compensation for restaurants due to loss of use of the kitchen. The tenant said there was a recorded conversation where the insurer states there is compensation for food being paid as well as for mortgage.

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

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Analysis:

As discussed with the parties in the hearing, the onus is on each party to prove their claim on a balance of probabilities. In respect to the landlord's claim, I find he is not entitled to $994.56 for cleaning. I find the condition inspection report notes only that the stove and refrigerator need cleaning and the tenant agreed to a $50 deduction for that. Furthermore, the cleaning invoice states it is for "post construction cleaning. In respect to his claim for $551.25 for changing locks, I find the weight of the evidence is that the tenant returned the keys on November 3, 2017 when the tenant had to arrange for the move out condition inspection report. Although he has the invoice for the change of locks on November 1, 2017, I find the landlord does not have a right to change locks while the tenants' goods are still in the property unless he obtains an Order of Possession and a court appointed bailiff to enforce it. I dismiss this portion of his claim.

Regarding his claim for $4,410.00 for painting, I find insufficient evidence that the tenants damaged the paint. The move out condition inspection report notes no such damage. I dismiss this portion of his claim.

Regarding the unpaid rent of $3050 for October 2017, I find section 26 of the Act requires the tenant to pay rent on time whether or not the landlord has fulfilled their obligations under the Act. As the weight of the evidence is that the tenants did not return the keys until November 3, 2017, I find they did not return possession to the landlord until that date. Therefore, I find the landlord entitled to an additional 3 days of rent for November 2017 ($101.66 x 3 =$304.99). Appropriate rent rebates will be considered in the tenant's claim.

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.

In respect to the tenant's claims for $550 for replacement cost of items damaged by the Restoration Company, I find the landlord is not the tenant's insurer so is not responsible to compensate them for items that may have been damaged during the restoration process. I find the landlord did not agree to reimburse them for $250 for past labour in cutting up a fallen tree and disposing of it or for their portion of a shared cost of $375 for hot tub parts and repair. Therefore, I dismiss these claims as I find the landlord did not violate the Act or their tenancy agreement.

I find section 32 of the Act requires the landlord to repair and maintain the premises. I find insufficient evidence that the landlord was violating the Act by not maintaining the premises. I find the weight of the evidence is that the flood was an accident due to the dishwasher malfunctioning. I find the landlord's evidence credible that he addressed the situation diligently but the insurer could not get the Restoration Company out immediately as it was Saturday. The tenants said there was a 4 day delay and I do not find this unreasonable in the circumstances. However, although the landlord may not have been at fault, I find the weight of the evidence is that the tenants lost facilities and the use of a considerable portion of their home. I calculate it was about half of the home. find the weight of the evidence is that this occurred on September 16, 2017 and the restoration was completed on October 18, 2017 so I find the tenant entitled to $1525 rebate of rent for one month plus 2 days (101.66 x 2= $203.33) for a total rebate of $1728.33. I find them not entitled to a further waiver of rent so I dismiss their further claim for October 2017.

In respect to their $2000 claim for loss of their peaceful enjoyment and privacy, I find they lost a significant amount of their peaceful enjoyment and privacy by having a Restoration company making loud noises until late at night and casting dust over them and their belongings. While it was not the landlord's fault that the restoring had to be done, I find the weight of the evidence is that he was negligent in protecting the tenants' peaceful enjoyment as required by section 28 of the Act. I find the weight of the evidence is that he did not attempt to control the working hours or behaviour of the restoration company. He did not ask them to protect the tenant's belongings and did not restrict entry into the tenant's home. He had the tenants leave a key under the mat and allowed tradesmen and others to enter. I find the tenant's evidence credible that she was even locked out twice due to the landlord's handling of the key. I find them entitled to compensation of $1000 for this disturbance of their peaceful enjoyment. I take into account that they have achieved a rent rebate so are only liable for half of the rent during this disruption and they still had a place for their family to live.

Regarding the tenant's claim for $400 compensation for meals they had to buy due to loss of functionality of the kitchen, I find their evidence credible that the restoration company's equipment prevented their access to the kitchen appliances. I find it credible that they were forced to buy family meals outside the home. However, they provided no invoices to prove costs. Policy Guideline 16 provides:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:
"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find the loss of the use of a kitchen is an infraction of the tenant's right to facilities as provided in their tenancy agreement. Therefore I find the tenant entitled to $200 as compensation for some restaurant meals.

In respect to the tenant's dispute of the illegal increase in rent, I find section 43 (1) (c) of the Act provides that the landlord may increase the rent up to an amount agreed by the tenant in writing. I find there was not an illegal rent increase as the tenant agreed to it and signed a new lease. I dismiss this portion of their claim.

Regarding the refund of their security deposit, I find section 38 of the Act states the landlord has 15 days from the later of the end of the tenancy and the tenant providing their forwarding address in writing to either refund their deposit or make an application to claim against it. I find the tenant agreed to a $50 deduction for cleaning so the balance was $1425, I find the tenant vacated (returned possession) to the landlord on November 3, 2017 and provided their forwarding address in writing on November 1, 2017. I find their forwarding address valid as they had arranged to have their mail forwarded from it to their new home. I find the landlord made an Application on October 17, 2017 so within time to avoid the doubling provision of section 38 of the Act. I find the tenant entitled to a refund of the balance of $1425.

Conclusion:

The find the Applications of both parties are successful and they are entitled to monetary amounts as calculated below. I find the landlord entitled to recover only one filing fee for I find his filing of two applications was unnecessary; his claims could have been combined in one application.

Landlord rent arrears and over holding rent	3354.99
Filing fee to landlord	100.00

Total award to landlord	3454.99
Tenant awards/rebates	
Less rebate of rent to tenant 50% of one month plus 50% of 2 days (1525 + 101.66)	1626.66
Less Compensation for loss of peaceful enjoyment	1000.00
Less nominal award for food	200.00
Refund of portion of security deposit	1425.00
Less tenant filing fee	100.00
Total Tenant	4351.66
Reconciliation	
Tenant's award	4351.66
Less Landlord's award	-3454.99
Balance is monetary award to tenant	**896.67**

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 19, 2017

Residential Tenancy Branch