Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, FF

Introduction

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

- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and

- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant testified that the Tenant's Application for Dispute Resolution (the Application) and evidentiary package was served to the landlord by way of registered mail on or about October 25, 2017. The landlord confirmed receipt of the Application and evidentiary package. In accordance with sections 88 and 89 of the *Act*, I find the landlord was duly served with these documents.

The landlord testified that they served their evidentiary package to the tenant by way of registered mail on December 05, 2017. The tenant confirmed that they received the evidentiary package. In accordance with section 88 of the *Act,* I find the tenant was duly served with the landlord's evidence.

Issue(s) to be Decided

Is the tenant entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant gave written evidence that this tenancy began on October 01, 2015, with a monthly rent of $1,780.00, due on the first day of each month. The tenant testified that their currently monthly rent is now $1,860.00. The landlord confirmed that they currently retain a security and pet deposit totaling in the amount of $1,590.00

In addition the tenant also provided copies of e-mails and text messages exchanged between the landlord and the tenant, a copy of a Form K dated October 01, 2015, as well as a copy of a letter from the tenant to the landlord dated October 20, 2017, regarding the tenant's difficulties booking the elevator to move in to the rental unit.

A Monetary Order Worksheet was also submitted into evidence by the tenant outlining their monetary claim for $900.00 for loss of 'peaceful enjoyment' and the $100.00 filing fee for a total rent reduction of $1,000.00.

The landlord submitted into evidence a copy of a cheque from the tenant to the landlord dated October 14, 2015, for half of the move in fee, a copy of a letter regarding the tenant's claims that they could not move into the unit due to the move-in fee not being paid and a copy of an e-mail from the landlord to the landlord's agent regarding the issues with the tenant moving into the rental unit.

The tenant testified that they could not move their belongings into the rental unit due to the move-in fee not being paid by the landlord even though the landlord's agent agreed to pay the move-in fee on behalf of the tenant as incentive for the rental. The tenant referred to e-mails sent to the landlord on October 20, 2015 and October 26, 2015, in which the tenant discusses the issue of the move-in fee with the landlord. The tenant admitted that the agreement with the landlord's agent was a verbal agreement and there was nothing in writing or on the tenancy agreement which supported the tenant's claim of a verbal agreement. The tenant submitted that the Form K was not completed and submitted to the strata until October 07, 2015, which impeded the tenant from moving into the rental unit.

The landlord questioned the tenant on whether the tenant had booked the elevator with the building manager three times to move into the rental unit and cancelled each time for the tenant's own personal reasons.

The tenant responded that this was true.

The landlord testified that the tenant did not want to pay for the move in fee but that the tenant could have moved their belongings into the rental unit without the move in fee as the strata would have just sent the bill to the owner. The landlord stated that the Form K was not an impediment to the tenant moving into the rental unit as the tenant was living in the rental unit

prior a couple days prior to the official commencement of the tenancy on October 01, 2015, and that the tenant did not need the Form K to be completed to book the elevator.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Residential Tenancy Regulations (the Regulations)* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the tenant bears the burden to prove that their access to the elevator for moving their belongings into the rental unit was restricted by the landlord due a disagreement as to who is responsible to pay the move-in fee to the strata corporation, and that the tenant should be compensated with a rent reduction.

I have reviewed all documentary evidence and affirmed testimony. Based on the above and a balance of probabilities, I find that the tenant has not demonstrated that they have suffered any damage or loss due to the violation or neglect of the *Act, Regulations* or tenancy agreement by the landlord.

Section 7 (1) (f) allows a landlord to charge a tenant for the non-refundable move-in or move-out fee charged by a strata corporation to the landlord.

Based on the evidence and affirmed testimony, I find that the tenant has not provided any written evidence to support their claim that the landlord's agent agreed to waive the move-in fee. I find that the *Regulations* hold the tenant responsible for this fee.

I further find that, even if the tenant could not come to an agreement with the landlord as to who is responsible for the move-in fee, I accept the landlord's testimony that the tenant could have booked the elevator without paying the move-in fee and the strata corporation would have billed it to the landlord, who would have had to recover it from the tenant. I find that the tenant has not provided sufficient evidence clearly demonstrating that the building manager was restricting access to the elevator for the tenant to move their belongings into the rental unit due to the move-in fee not being paid. Although the tenant refers to difficulty booking the elevator with the building manager in their correspondence of October 20, 2015, they do not provide any

evidence of communication with the building manager where they are prevented from booking the elevator.

I find that the tenant has also admitted in their testimony that they were not impeded from booking the elevator due to an issue with the move-in fees as they had booked it three times and cancelled each time of their own volition, not because of any restriction from the landlord or the building manager. I further find that the tenant's claim that they were not able to move into the rental unit due to the Form K not being completed is not supported with any evidence as the tenant did not dispute the landlord's assertion that the tenant was living in the rental unit a couple days prior to October 01, 2015, and prior to the Form K being submitted to the strata corporation.

I find that the tenant has not proven that they were impeded from booking the elevator due to the actions or neglect of the landlord and that any loss of 'peaceful enjoyment' due to the tenant not having their belongings in the unit is the responsibility of the tenant.

For the above reasons I dismiss the tenant's Application for a rent reduction for services or facilities agreed upon but not provided, without leave to reapply.

As the tenant has not been successful in their Application, I dismiss their request to recover the filing fee from the landlord without leave to reapply.

Conclusion

The tenant's 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: January 11, 2018

Residential Tenancy Branch