



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTLAND TELFORD LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, ERP, RP, PSF and RR

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs and emergency repairs to the rental unit pursuant to section 33;
- 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
- 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.

As the landlord's legal counsel confirmed that on or about June 8, 2018, the landlord received a copy of the tenant's dispute resolution hearing and written evidence packages sent by the tenant's advocate on June 4, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. As both parties agreed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Preliminary Matters

Both parties agreed that this tenancy was scheduled to have ended by June 30, 2018 as per a settlement agreement I recorded in a decision I issued on June 25, 2018 (see

RTB File Number on first page of this decision). The parties also agreed that the tenant did not actually vacate the rental unit until July 7, 2018.

The parties also agreed that no rent was paid by the tenant to the landlord since a February 4, 2018 fire in the rental unit next to where the tenant was allowed to move into by the landlord after that fire. The landlord subsequently issued a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) to the tenant on February 19, 2018. The landlord agreed to waive rent until April 30, 2018, the effective date identified on the 2 Month Notice.

The parties agreed that the tenant has not paid rent for May or June 2018, and did not pay any rent for the first seven days in July 2018, when he overhauled the rental premises beyond the scheduled June 30, 2018 date agreed to at the June 25, 2018 hearing cited above.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Is the tenant entitled to receive a monetary award for the landlord's failure to provide services and facilities that were to have been provided during the course of this tenancy but were not? Is the tenant entitled to a retroactive rent reduction for the loss of quiet enjoyment of this rental unit or for the lack of services provided during this tenancy? Should any monetary award issued in the tenant's favour be reduced by the amount of rent still owing from this tenancy?

Background and Evidence

On August 4, 2015, the tenant signed a one year fixed term tenancy agreement for the rental unit beside the one where he moved to after the February 4, 2018 fire. When that term expired, that tenancy continued on a month-to-month basis until February 4, 2018, when the fire rendered that rental unit uninhabitable. Monthly rent according to the only signed tenancy agreement for the original rental unit was set at \$900.00, payable in advance by the first of each month, including heat, but excluding hydro. The monthly rent by the time this tenancy ended was set at \$1,000.00. The landlord continues to hold the \$450.00 security deposit for this tenancy paid on August 1, 2015.

No new tenancy agreement was signed by the parties when the tenant moved into the rental unit he occupied after the fire in February 2018 until he vacated the property on July 7, 2018. One of the landlord's representatives confirmed that no report was

created of the joint move-in inspection of the rental unit the tenant occupied for the final five months of his residency in this rental building. The landlord's failure to complete a report of that inspection and provide it to the tenant extinguished the landlord's right to claim against the security deposit.

The tenant's application for a monetary award of \$8,360.00 included the following items:

Item	Amount
Loss of Possessions in Fire of Feb. 2018	\$2,200.00
Loss of Income	1,000.00
Additional Hydro Costs Incurred due to lack of Heat in this Building	360.00
Loss of Quiet Enjoyment	1,200.00
Retroactive Rent Reduction	3,600.00
Total Monetary Order Requested	\$8,360.00

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. The tenant agreed to withdraw the existing application for dispute resolution and furthermore agreed that he would not initiate any new application for dispute resolution seeking a monetary award for the items identified in his application.
2. The landlord agreed to waive any right to claim for a monetary award for unpaid rent owing from this tenancy.
3. The landlord agreed to return the security deposit for this tenancy to the tenant in accordance with the provisions of section 38 of the *Act* within 15 days of receiving the tenant's forwarding address in writing.
4. The agreed to not set foot on the rental property again.
5. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenant's application and all issues currently in dispute arising out of this tenancy at this time and that they did so of their own free will and without any element of force or coercion.

Conclusion

I order the tenant's application is withdrawn and, in accordance with Term 1 of their settlement agreement, the tenant is prevented from applying for a monetary award against the landlord for the items identified in the tenant's application.

To implement Term 2 of the settlement agreement, the landlord has waived the right to claim a monetary award for unpaid rent against the tenant.

To give effect to the settlement reached between the parties and as discussed at the hearing, I order the landlord to return the security deposit for this tenancy to the tenant within 15 days of receiving the tenant's forwarding address in writing.

To give effect to the settlement agreement reached between the parties, I order the tenant to refrain from setting foot on the rental property again.

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: July 19, 2018

Residential Tenancy Branch