



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES VANTAGE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, OLC, ERP, RP, PSF, LRE, RR

Introduction

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

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause, dated June 12, 2018 ("1 Month Notice"), pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order requiring the landlords to make emergency and regular repairs to the rental unit, pursuant to section 33;
- an order requiring the landlords to provide services or facilities required by law, pursuant to section 65;
- an order to suspend or set conditions on the landlords' right to enter the rental unit, pursuant to section 70; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The landlords' two agents, landlord DC ("landlord") and "landlord AT," and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the property manager and that landlord AT was his assistant, and that both agents had permission to speak on behalf of both landlords named in this application at this hearing (collectively "landlords"). This hearing lasted approximately 60 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' written evidence package. In

accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's application and the tenant was duly served with the landlords' written evidence package.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the spelling of the landlord company name. Both parties consented to this amendment during the hearing.

At the outset of the hearing, the tenant confirmed that she had already vacated the rental unit and the only claims she was still seeking in her application were for the monetary order and rent reduction totaling \$3,000.00. I notified both parties that the remainder of the tenant's application was dismissed without leave to reapply.

Issues to be Decided

Is the tenant entitled to a monetary award for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

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

Background and Evidence

Both parties agreed to the following facts. This tenancy began on May 1, 2018 and ended on July 18, 2018. Monthly rent in the amount of \$1,200.00 was payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant and the landlords continue to retain this deposit.

The tenant seeks a monetary order of \$3,000.00 total from the landlords. The landlords dispute the tenant's claim.

The tenant seeks two months of rent of \$1,200.00 each, totaling \$2,400.00, for a number of different issues at the rental unit. She said that she asked the landlords to complete health-related repairs to the rental unit when she first moved in and they were not done. The tenant stated that she did not suffer any medical conditions or miss time off from work, as a result of the issues, so she did not have documentation supporting same. She said that she is out of town for at least 20 days per month and only living at the rental unit for about 10 days per month.

The tenant stated that there were lots of insects in the house, which she had to pay an exterminator to clean, since the landlords failed to do so, but she did not submit the receipt. She explained that there was mold underneath the kitchen sink, that she spent five days without the kitchen sink due to the landlords' delay in fixing it, and that her dishes kept piling up. Landlord AT stated that the tenant reported the kitchen sink issue on a Friday night and the landlord offered to look at it the next day but the tenant refused entry because she did not want to deal with the landlord personally. Landlord AT said that the repair was delayed because the tenant refused entry. The landlord stated that the pipe below the kitchen sink was unscrewed and he thought it was deliberately done by the tenant after the repair person fixed it, and then it was tightened again by the tenant after.

The tenant testified that there were sewage backups at the rental unit and the landlords cleaned the first one using the tenant's towels and then throwing them away without her permission and the second sewage backup was cleaned by the tenant with no assistance from the landlords. She claimed that the sewage went into the air vents and it was not safe for her to breathe that air.

The landlord claimed that he called a plumber who used a plunger to repair the first sewage backup in the toilet initially, claiming that it was plugged and otherwise worked fine but it was an older toilet. The landlord maintained that the owner of the unit then bought a new toilet and had it installed. When the tenant reported the second sewage backup from the toilet, the landlord stated that a sewage company came to check the issue, said that they thought the toilet overflowed and the tenant failed to shut off the water when it was rising. When there was another sewage backup reported by the tenant, the landlord claimed that a repair person made an appointment to look at the problem, the tenant refused entry, and the landlords were required to pay a cancellation fee, which the tenant refused to pay when asked.

The tenant maintained that there were giant and dangerous holes in the front yard of the rental property, making it dangerous for her to use. The landlord explained that the holes were minor, only two inches, and did not create a safety issue for the tenant.

The tenant seeks \$600.00 for the landlords disposing of her towels to clean up the sewage backup at the rental unit. Landlord AT claimed that a restoration company came in to clean up a sewage backup and the tenant's towels were used with the permission of the tenant's babysitter, who was present during this cleanup. Landlord AT said that the tenant's babysitter told the restoration company to throw the towels

away after they offered to clean and return them to the tenant. Landlord AT stated that the restoration company specifically asked her whether it was okay to throw out the towels and she said yes after they told her that the tenant's babysitter gave permission to do so. The tenant claimed that she was home that day and the restoration company never spoke to her and she did not know what her babysitter said to the landlord, if anything. The tenant claimed that even if the babysitter said to throw the towels away, the restoration company should not have done so because the babysitter had no authority to make that decision and was not the tenant.

The tenant said that she also paid for screening, locks and garbage cleanup at the rental unit. The tenant claimed that she provided copies of the receipts as well as letters from the previous tenant and the landlords, by uploading to the Residential Tenancy Branch ("RTB") website on the date of the hearing on July 23, 2018, but she did not provide copies to the landlords. I notified the tenant that I had not received the documents and that I could not consider it at the hearing or in my decision because it was not served to the landlords as required.

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. To prove a loss, the tenant 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 landlords in violation of the *Act*, *Regulation* 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 tenant 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 did not provide sufficient evidence to substantiate her monetary claim and failed to satisfy the four-part test. She was unable to justify the \$3,000.00 amount being claimed. Therefore, on a balance of probabilities and for the reasons stated below, I dismiss the tenant's claim of \$3,000.00 without leave to reapply.

The tenant claimed that she does not live at the rental unit for at least 20 days per month. The tenant's tenancy was for less than three months total. She failed to show that the landlords did not deal with the repair issues at the rental property, regarding the sewage backup and the kitchen sink. She failed to show how the landlords' efforts to repair and maintain the property, which are the landlords' obligations under section 32 of the *Act*, caused her a loss. I find that the landlords dealt with the tenant's repair issues in a timely and reasonable manner, considering the tenant refused access since she did not want the landlord to be personally present at the rental unit. I find that the tenant failed to show what problems the sewage in the air vents and the supposed mold underneath the kitchen sink, affected her work or her health. She provided no documents to show wage loss or medical conditions, stating that she did not suffer any.

The tenant failed to show how the insect infestation and the holes in the front yard specifically affected her at the rental property and for how long. She stated that she paid for an exterminator for the insects but did not provide a copy of this receipt, even though she said she had it. She failed to provide receipts in a timely manner for the screening, locks and garbage cleaning, which she said she uploaded to the RTB website on the date of the hearing but I did not receive it and she did not serve it to the landlords, so I could not consider it. She failed to show the value of the towels she said she lost after the sewage cleanup. I find that the tenant's babysitter, who she authorized to be at the rental unit, told the restoration company to throw the towels away.

Conclusion

The tenant's entire 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: August 1, 2018

Residential Tenancy Branch