



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, FFT

Introduction

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

- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

In an amendment to the original application, the tenant added a request for reimbursement of \$3,564.61 in expenses they had incurred during this tenancy, and a return of their security deposit.

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.

At the hearing, the spouse (AG) of an agent retained by the landlord to assist the landlord with matters relating to this tenancy attended. AG advised that their spouse had planned to attend this hearing, but had been incapacitated by a medical procedure which prevented him from participating in this hearing. AG requested an adjournment of the hearing to enable their spouse to attend at an adjourned date.

As the landlord confirmed that they received a copy of the tenant's original dispute resolution hearing package sent by registered mail on September 27, 2018, and the amended application sent by registered mail on October 3, 2018, I find that the landlord was duly served with these packages in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that

the written evidence pertaining to the matters properly before me were served in accordance with section 88 of the *Act*.

At the hearing, the parties confirmed that the repairs requested initially by the tenant by way of an August 17, 2018, had been completed by the landlord's tradesperson on October 4, 2018. The parties also reported that the landlord issued a 2 Month Notice to End Tenancy for Landlord Use of Property (the 2 Month Notice) to enable the owner of this property, the Respondent's brother, to move back into the premises in the last half of August. According to the terms of the 2 Month Notice, the tenant is to vacate the rental property by October 31, 2018. Although the tenant said she started moving out of the property on October 3, 2018, she advised that she still has belongings at the property, which she plans to remove by the end of October.

Since the requested repairs have been completed, the issue remaining is whether the tenant is entitled to some form of monetary compensation for the loss in the value of her tenancy during the period from August 17, 2018 until October 4, 2018 due to the delay in obtaining these requested repairs. As the landlord was aware that the tenant was seeking a monetary award at this hearing, I have considered this aspect of the repair issue as associated with the request for a monetary award.

Rule 3.6 notes that all evidence must be relevant to the claim being made in the application for dispute resolution. I noted at the hearing that much of the written evidence submitted by both parties to the RTB had little relevance to the issues of the requested repairs and to the tenant's request for a monetary award for expenditures she undertook to repair items during this tenancy.

Adjournment Request

The Residential Tenancy Branch's Rule of Procedure 7.8 enables a party to request an adjournment after the dispute resolution has commenced. In determining whether an adjournment request is to be granted, I am required to take into consideration the criteria established under 7.9 of the Rules of Procedure before making a ruling.

In this case, the principal matter of repairs identified in the tenant's original application has already been addressed by the landlord. The remaining issues are ones that can be considered on the basis of testimony from the landlord who was present at this hearing and through considering the written evidence submitted by the parties. After considering the Residential Tenancy Branch's Rule of Procedure 7.9 and taking into

account the criteria for granting an adjournment and the extent to which sworn testimony from AG's spouse was likely to have an impact on the issues properly before me once the repairs had been completed, I declined to grant the request for an adjournment.

Amended Application

Rule of Procedure 2.3 establishes that claims made in the application must be related to each other and grants me the discretion to dismiss unrelated claims with or without leave to reapply. While Rule 4.1 allows an application to amend a claim, this Rule also states that "unrelated claims contained in an application may be dismissed with or without leave to reapply."

In this case, I find that the tenant's attempt to add a return of the security deposit is premature. This issue has no connection to the tenant's original application for repairs, a request made prior to the landlord's issuance of the 2 Month Notice. As this tenancy is still continuing, it would be premature for a consideration of the tenant's request to obtain a return of the security deposit for this tenancy. I dismiss this aspect of the tenant's amended application with leave to reapply once the tenancy has ended, the tenant has provided the landlord with a forwarding address in writing, and the landlord has been given an opportunity to return the security deposit or apply to retain that deposit.

I recognize that the tenant's amendment to add a requested monetary award of \$3,564.61 for reimbursement of expenses for repairs incurred by the tenant during this tenancy has only a loose connection to the tenant's original application for the tardiness in obtaining requested repairs. However, I have considered this aspect of the tenant's application in this decision, as well as the loss in value of the tenancy arising out of the delay in obtaining the requested repairs.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the loss in the value of her tenancy as a result of the landlord's alleged delay in repairing her stoves/ovens and kitchen faucet? Is the tenant entitled to any other monetary award for expenditures she incurred to repair the premises during this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties agreed that this tenancy began on or about May 1, 2012. As per a decision issued by another arbitrator appointed pursuant to the *Act* on February 8, 2018, monthly rent for this tenancy is \$1,200.00. In that decision, the arbitrator accepted the tenant's assertion that the owner of the property, the brother of the Respondent named in the tenant's application, allowed the tenant to stay in the rental property rent free for a period of time. In that decision, the arbitrator required rent payments to resume as of January 1, 2018.

The landlord did not dispute the tenant's assertion that the tenant sent the landlord an email on August 17, 2018 requesting repairs to both stoves and to the leaking faucet in the upstairs kitchen. The landlord testified that the tradesperson the landlord hired to undertake the requested repairs was unable to commence these repairs at the times scheduled with the tenant because of an unexpected family emergency. The repairs were completed on October 4, 2018.

The tenant explained that elements on the basement level of the stove have worked intermittently for some time. The tenant testified that by August 17, only one of the four elements was working properly; the others worked only intermittently. The tenant testified that the broiler on the upstairs oven was not working, although the rest of the stove and oven was operating correctly throughout this period. The tenant said that the upstairs kitchen faucet sprayed erratically to the point that she could no longer use that sink between the time that she notified the landlord of the leakage problem and when it was repaired.

In the evidence presented by the tenant in support of the amended application for a monetary award of \$3,564.61, the tenant presented the following written statement:

In the last 6.5 yrs, there's been no maintenance on the house. I've had to pay for plumbing numerous times, and also for painting and other things. I didn't ask the landlord to pay as they wanted to evict me, and I didn't want to give them a reason.

At the hearing, the tenant confirmed that they had never asked nor received written authorization from the owner of the property to pay for any of these repairs, nor had they received any such written authorization.

The landlord testified that at page 3 of the February 8, 2018 decision, the arbitrator referenced the following statement from the tenant at that hearing, which demonstrated that the tenant had accepted responsibility for the costs of maintenance of the property in exchange for non-payment of rent.

The Tenants stated that they specifically had conversations with M.W. about not having to pay rent until the property sold. The Tenants stated that they agreed to take care of the property, including maintenance and keeping it presentable...

Analysis

Section 32(1) of the *Act* establishes a landlord's responsibility to provide and maintain residential property in a state of repair that:

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In this case, I find that the delay incurred in obtaining repairs to the stoves and faucet was unreasonable. Despite the family health emergency experienced by the landlord's tradesperson, it is unreasonable to expect a tenant to have to wait almost seven weeks to obtain basic repairs to a stove and faucet. Although it would be reasonable to expect some type of delay in scheduling a repair person to attend to the necessary repairs, I find that the seven week delay in obtaining completion of these repairs was far too long and not in accordance with the landlord's responsibilities established in section 32(1) of the *Act*.

Section 65(1)(c) and (f) of the *Act* allows 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." Section 65 of the *Act* reads in part as follows:

65 (1) *Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:...*

(c) that any money paid by a tenant to a landlord must be

(i) repaid to the tenant,

(ii) deducted from rent, or

(iii) treated as a payment of an obligation of the tenant to the landlord other than rent;...

f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement...

Although I accept that there has been a loss in the value of this tenancy, I note that the tenant still had access to a functioning stove and oven upstairs, with the exception of the broiler feature of that oven. Given the limited nature of the inconvenience presented to the tenant by the landlord's tardiness in undertaking the repairs to the stoves, I allow the tenant a \$50.00 loss in the value of this tenancy pursuant to section 65(1) of the *Act*.

An inoperative kitchen sink in the upstairs kitchen would present more of a problem to the tenant. For that reason, I allow the tenant a reduction in rent in the amount of \$100.00 for the loss of access to this feature of this tenancy, again pursuant to section 65(1) of the *Act*.

By the tenant's own admission in writing and in sworn testimony, the tenant never obtained authorization from the landlord to pay for the expenditures the tenant has claimed in the amended application for a monetary award. In the absence of obtaining the necessary authorization to underwrite the cost of these expenditures incurred by the tenant, I dismiss this element of the tenant's application without leave to reapply.

Since the tenant has been partially successful in this application, I allow the tenant to recover the \$100.00 filing fee for their application.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to recover losses in the value of their tenancy and to recover their filing fee for this application:

| Item | Amount |
|---|-----------------|
| Loss in Value of Tenancy (Stoves and Ovens) | \$50.00 |
| Loss in Value of Tenancy (Faucet) | 100.00 |
| Recovery of Filing Fee for this Application | 100.00 |
| Total Monetary Order | \$250.00 |

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The tenant's application to obtain a recovery of the security deposit for this tenancy is dismissed with 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: October 26, 2018

Residential Tenancy Branch