



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, PSF, MNDCT, OLC, FFT

Introduction

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

- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- 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 provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord, the landlord's agent and Tenant N.B. attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to cross examine one another, to make submissions and to call witnesses. Tenant N.B. (the tenant) indicated that he would be representing the interests of both tenants in this hearing.

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 landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and an evidentiary package. The tenant confirmed receipt of the landlord's evidentiary package. In accordance with sections 88 and 89 of the *Act*, I find that the landlord and tenant were duly served with these documents.

Issue(s) to be Decided

Are the tenants entitled to an order to allow them to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order to the landlord to provide services or facilities required by law?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord and the tenant agreed that this tenancy began on May 01, 2013, with a monthly rent of \$1,350.00, due on the first day of each month and a security/pet damage deposit in the amount of 1,000.00. The landlord and tenant agreed that the tenants are required to pay 50% of the utilities for the residential premises.

The tenant provided in evidence:

- A copy of a picture showing a damaged flower bed at the residential premises;
- A copy of a spreadsheet showing the electrical utilities owing from the downstairs tenant from February 2016 to May 2018 in the amount of \$1,143.64; and
- Copies of two spreadsheets showing the total amount of gas utilities owing from February 2016 to May 2018 in the amount of \$2,630.20.

The landlord provided in evidence:

- A copy of a timeline of events which states that if the tenants had objected to the arrangement for the payment of utilities, the landlord would have taken over the utilities sooner. The landlord states that they were not aware of the downstairs occupant owing the tenants for utilities for the past two years until the spring of 2018. The statement also indicates that the laundry room is not locked, there is no restriction of access and that a \$200.00 rent reduction would be more than the tenant pays for the total of all of their utilities; and

- Copies of letters from the landlord to the tenant advising that the laundry room is not locked, requesting the bills for the utilities and trying to arrange a meeting between the landlord, the tenants and downstairs occupants to resolve issues.

The tenant testified that a downstairs occupant has locked the door to the laundry facilities twice but confirmed that it was only for a short period of time and it is currently unlocked. The tenant submitted that they do not want to use the laundry facilities due to some confrontations that previously occurred between the tenants and the downstairs occupants. The tenant stated that they are concerned about potential interactions with the downstairs occupants resulting in incidents that could lead to manufactured accusations against the tenant. The tenant testified that they are fearful to use the back yard as well and have suffered a reduced usable footprint of their tenancy due to the situation with the downstairs occupant. The tenant indicated that they are seeking a rent reduction in the amount of \$200.00 per month for the loss of the laundry facility and back yard.

The tenant submitted that the downstairs occupant has not paid their share of the gas and utility bills over the last couple of years. The tenant indicated that they are seeking compensation from the landlord to be reimbursed for paying utilities for the whole house when they are only responsible to pay 50% of the utilities. The tenant confirmed that there was a similar arrangement with the previous occupant downstairs and that they never had an issue with the previous occupant paying their share of the utilities.

The landlord testified that there is no reason that the tenants cannot use the laundry facility. The landlord stated that there were some confrontations between the tenants and the downstairs occupants which resulted in the downstairs occupant calling the police due to being fearful of the tenants' aggression. The landlord stated that one of the incidents which resulted in the laundry door being locked for a short period was when the tenant threw a flower pot in the direction of the downstairs occupant.

The landlord testified that they are not aware of any police order which restricts contact between the tenants and the downstairs occupant and maintained that there is no restriction of the use of the laundry facility, only that the tenant does not want to use it due to past events. The landlord testified that the downstairs occupant has not asked the landlord to restrict the tenants' use of the laundry room or any other facilities.

The landlord stated that they were very surprised when they were informed by the tenant about the downstairs occupant not paying their share of utilities and that the

tenants were owed such a large amount. The landlord submitted that they immediately put the utilities in the landlord's name upon learning about the situation. The landlord stated that if they had been informed about the downstairs occupant not paying their share of the utility bills when it first started to happen a couple of years ago, they would have taken action then and could have absorbed a little of the tenants' losses. The landlord stated that the amount of utilities owed is too much to absorb at this point and they are concerned that they will be able to recover any amounts from the downstairs occupant.

The tenant confirmed that there was no police order restricting contact between the downstairs occupant and the tenants and did not dispute that he had thrown a flower pot. The tenant also confirmed that they only advised the landlord of the difficulty in getting utility payments from the downstairs occupants in the spring and only recently provided a full accounting of all amounts owing for utilities.

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.

Section 7 (2) of the *Act* states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, *Regulations* or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Regarding the tenants' claim for utilities, I find that the tenants bear the burden to prove that they incurred a loss, that this loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulations* or tenancy agreement and that the tenants have done what is reasonable to minimize the loss.

Having reviewed the evidence and affirmed testimony, it is undisputed that the tenants have incurred a loss for the payment of utilities beyond what they are responsible for under the tenancy agreement; however, I find that the tenants did not take reasonable actions to minimize their loss. I find that it is undisputed that the tenants did not advise the landlord about the situation until over two years after the losses started to accrue.

If the tenants had informed the landlord about the downstairs occupant not paying their share of the utilities when it first started to occur and the landlord had not responded to this information, I would have found that the landlord was in violation of the Act. I find that it is undisputed that the landlord acted to put the utilities in their own name within a reasonable period of time upon finding out about the amounts owing to the tenants for utilities over the last two years. I accept the landlord's testimony that they would have absorbed a loss and pursued the downstairs occupant for utilities if they were informed of the situation earlier.

I find that it would have been reasonable for the tenants to have informed the landlord about the downstairs occupant owing them for utilities when the losses started to increase beyond a month or even two or three at the very most. As the tenants did not take this reasonable action and did not inform the landlord for over two years, I find that the tenants did not minimize their loss as required pursuant to section 7 (2) of the Act. Therefore, the tenants' application to be compensated for the downstairs occupants' share of utilities, from the landlord, is dismissed without leave to reapply.

I have reviewed the documentary evidence, including the affirmed testimony, and I find that the tenant is not restricted from using the laundry facilities or the back yard. I find that the tenant confirmed that there is no police order restricting contact between the downstairs occupant and the tenants which would prevent them from using the facilities included as a part of their tenancy agreement. I find that the landlord has not taken any action or directed the tenants in any way regarding the use of the facilities and I accept the landlord's testimony that the tenants have full access to the laundry facilities and the back yard.

While I can appreciate the fact that the tenants feel apprehensive about using their facilities due to past interactions with the downstairs occupants, I find that the tenant is aware of the fact that there is no one restricting their use of the facilities. I find that there is no evidence or testimony provided which indicates that the downstairs occupants pose any risk to the tenants which would prevent or restrict the tenants from using the

facilities other than the tenants' perception that the downstairs occupants are seeking to create negative stories about them.

For the above reasons, I find that the tenants have not demonstrated that the landlord has restricted the use of the laundry facilities or the back yard. I further find that the tenants have not demonstrated that the downstairs occupants are taking any action to restrict the tenants' use of the laundry facilities or the back yard which the landlord has not responded to. I find that the landlord has taken action to confirm with the downstairs occupant and to communicate with the tenants that they are free to use the facilities at their discretion, but that the tenants are choosing not to use them of their own volition.

Therefore, the tenants' Application for the landlord to provide services or facilities required by law and the tenants' Application for a rent reduction in the amount of \$200.00 per month for services or facilities agreed upon but not provided are dismissed, without leave to reapply.

As I have not found that the landlord is currently in violation of the Act, Regulations or tenancy agreement as they have not restricted any services or facilities required by law and were not in violation of the Act regarding the utility bills, I dismiss the tenants' request to have the landlord to comply with the Act, Regulations or tenancy agreement.

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

Conclusion

The tenants' Application is dismissed in its entirety, 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: November 20, 2018

Residential Tenancy Branch