



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP LRE MNDCT MNRT OLC OT

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 requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;

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 both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution, amendments and evidence. The tenant confirmed receipt of the landlord's evidentiary materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

At the conclusion of the hearing, the tenant made an application requesting to amend the monetary amount of the claim sought. The tenant said that they have recently received a utility bill for \$90.00 and wish to increase their monetary claim by that amount. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as I find that the inclusion of a new utility bill that was not claimed in the original application or amendment is not related to the present claim and not reasonably

foreseeable. I find that it would be prejudicial to allow the tenant to increase their monetary claim and decline to allow the increase.

At the hearing the parties testified that the landlord has performed repairs to the rental unit and the only outstanding issue is the monetary claim of the tenant. Accordingly, the tenant withdrew their claim save for their application for a monetary award.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Background and Evidence

The parties agreed on the following facts. This tenancy began in September 2018. The monthly rent is \$1,195.00.

The tenant testified that the rental unit had a number of deficiencies, most notably a lack of heating, which the landlord did not address in a timely manner. The tenant said that while they continued to occupy the rental unit throughout the tenancy the lack of proper facilities had an impact on their life. The tenant gave evidence about various issues she had with the rental suite including the lack of drapery on some of the windows, noisy toilets and a broken fireplace. The tenant said that because the fireplace is visibly broken she has not used it during the tenancy. The tenant seeks a monetary award of \$1,195.00, the equivalent of one month's rent.

The landlord testified that the tenant has already been paid \$144.00 for damages due to the repairs required to the rental suite. The landlord disputes that the repairs and maintenance were not conducted in a timely manner.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence

that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

Section 28 of the *Act* deals with the tenant's right to quiet enjoyment:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

I accept the tenant's evidence that the condition of the rental unit caused some decline in their enjoyment of the rental property. I find that the landlord was made aware of the deficiencies and performed some repairs.

While I accept that the condition of the rental suite had some impact on the tenant's right to quiet enjoyment I find that there is insufficient evidence for the full amount requested. The tenant testified that they continued to reside in the rental unit throughout the tenancy and gave little evidence of the impact that the deficiencies had on their routine. Much of the complaints recorded in the documentary evidence are cosmetic issues that I find would have little impact on the tenant's daily life.

Based on the evidence I find that a monetary award of \$100.00, in addition to the amount already paid by the landlord to the tenant, is appropriate.

Conclusion

I issue a monetary award in the tenant's favour in the amount of \$100.00. As this tenancy is continuing the tenant may satisfy this award by making a one-time deduction of this amount from the next scheduled monthly rent payment.

The balance of the application is withdrawn.

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: December 21, 2018

Residential Tenancy Branch