



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, RR
 OPC, MNDCL, MNDL, FFL

Introduction

The hearing was originally convened by telephone conference call on October 25, 2018, 11:00 A.M. to deal with an Application for Dispute Resolution (the “Application”) and the Amendment to an Application for Dispute Resolution (the “Amendment”) by the Tenant and a Cross-Application for Dispute Resolution (the “Cross-Application by the Landlord, both of which were filed under the *Residential Tenancy Act* (the “Act”). The original hearing was attended by the Tenant, the Landlord, the Landlord’s Agent (the “Agent”) and witnesses for both parties; all of whom provided affirmed testimony. The hearing was subsequently adjourned due to the time constraints of the one hour hearing and an interim decision was made on November 16, 2018.

The reconvened hearing was set for December 20, 2018, at 11:00 A.M. and a copy of the interim decision and the Notice of Hearing was sent to each party by the Residential Tenancy Branch (the “Branch”) in the manner requested by the parties in the original hearing. For the sake of brevity, I will not repeat hear the findings of fact made in the interim decision. As a result, the interim decision should be read in conjunction with this decision.

The hearing was reconvened by telephone conference call on December 20, 2018, at 11:00 A.M. and was attended by the Tenant, the Landlord, the Landlord’s Agent (the “Agent”) and witnesses for both parties; all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although the Application and the Amendment that were filed by the Tenant under the *Act* originally sought cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”), an order for the Landlord to complete emergency repairs for health and safety reasons, and a rent reduction; these claims were withdrawn by the Tenant in the original hearing as discussed in an interim decision dated November 16, 2018. As a result, this decision deals only with the Tenant’s Application and Amendment seeking \$1,000.00 in compensation for money owed.

Although the Cross-Application filed by the Landlord under the *Act* originally sought an Order of Possession based on the One Month Notice; this claim was withdrawn by the Landlord in the original hearing and the request for monetary compensation was reduced to \$623.40 as discussed in an interim decision dated November 16, 2018. As a result, this decision deals only with the Landlord's Application seeking compensation in the amount of \$623.40 from the Tenant for money owed and damage to the rental unit; and recovery of the filing fee.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided by them in their Applications.

Preliminary Matters

Preliminary Matter #1

After the witnesses were affirmed, they were excluded from the hearing until such time as they were called upon to provide testimony.

Preliminary Matter #2

Shortly after the start of the hearing, it became apparent that the Landlord's claim for \$623.40 does not relate to a loss suffered by the Landlord and instead, can properly be described as a dispute between tenants as it relates to damage alleged to have been caused by the Tenant to another tenant's vehicle (the Witness S.T.).

The Legislation does not confer upon the Residential Tenancy Branch (the "Branch") the authority to hear all disputes regarding every type of relationship between two or more parties. The Branch only has the jurisdiction conferred by the Legislation over landlords, tenants and strata corporations.

As the \$623.40 claim made by the Landlord is actually a dispute between tenants, I therefore refuse jurisdiction to hear or decide this matter for lack of jurisdiction pursuant to section 59 of the *Act*. Further to this, as the remainder of the Landlord's claims have already been withdrawn, I therefore dismiss the Landlord's claim for recovery of the \$100.00 filing fee without leave to reapply.

Based on the above, the hearing proceeded only on the Tenant's claim for \$1,000.00 in compensation.

Issue(s) to be Decided

Is the Tenant entitled to compensation for money owed?

Background and Evidence

Although a copy of the tenancy agreement was not submitted in the documentary evidence before me for consideration, in the hearing the parties agreed that a residential tenancy had existed between them, that the Tenant moved into the rental unit on approximately October 31, 2017, and that the tenancy ended on September 30, 2018.

The Tenant stated that as a result of the Landlord's failure to properly address a rodent problem during her tenancy, many of her possessions, such as a pool, trampoline, shelving unit, and car seat, among other things, were damaged. The Tenant stated in the hearing that the pool was worth \$600.00, the trampoline was worth \$987.00, the car seat was worth \$70.00 and the shelving unit was worth \$100.00 and stated that although the damages suffered by her were well in excess of \$1,000.00, she is only seeking compensation in the amount of \$1,000.00 due to depreciation.

The Tenant initially testified that she noticed the rodent infestation right away at the start of the tenancy and that the Landlord was already aware of the issue. Later the Tenant testified that she did not notice the rodent infestation until March of 2018, when she entered the storage shed in the spring in order to get out the lawnmower. The Tenant also provided four written witness statements and called several witnesses who confirmed that there was a rodent infestation.

The Landlord provided a written submission in which she stated that the Tenant was advised at the start of the tenancy that rats were known to be a problem in the area and that while she was welcome to use the shed to store belongings, she would be doing so at her own risk. She also stated that they had not experienced any issues in the last year provided the shed was inspected frequently, poison was laid down and the gaps under the doors covered. In her written submission the Landlord also stated that the property manager J.G. was contacted for the first time regarding rats in the shed in May of 2018, not March of 2018 as stated by the Tenant, and

that there had been no prior communication from the Tenant regarding this issue. During the hearing the property manager J.G. provided testimony consistent with the above noted statements from the Landlord with the exception that she agreed that the Tenant first notified her of the rodent infestation in the shed in March of 2018.

Although the parties disputed who provided supplies such as wood and cayenne pepper and whether the Agent offered to attend the property in order to address the rodent infestation, ultimately they agreed that G.S., the Tenant's partner, boarded up several gaps in the shed and sprinkled cayenne pepper in and around the shed at the Agents direction in an attempt to deal with the rodent infestation. The Tenant and G.S. stated that the rodent infestation persisted and despite bringing the issue to the Agents attention regularly, no further action was taken by the Agent or the Landlord to address the issue. As a result, the Tenant states that the Landlord breached the *Act* by failing to deal with the rodent infestation properly or in a timely manner and as a result, should be responsible for the cost of replacing the items damaged by the rats.

The Landlord and Agent disputed the above testimony stating that they addressed the rodent infestation in an adequate and timely manner and that no further action was taken as further complaints were not made by the Tenant in relation to the rodent infestation. Further to this, the Agent and Landlord stated that an agreement had been reached for the Tenant to move her belongings into the garage so that the shed could be removed and that despite making several offers to clear space in the garage for the Tenant, the Tenant failed to respond or take any action. As a result, the Landlord and Agent stated that the Tenant failed to mitigate her loss when she did not notify them that the rodent issue persisted or to move her belongings out of the shed and into the garage. They also stated that the Tenant should have carried her own insurance to cover this type of loss. As a result, The Agent and Landlord stated that the Landlord should not be responsible for any loss suffered by the Tenant due to the rodent infestation.

The parties and their witnesses also provided differing testimony in relation to whether there was also a rodent infestation in the garage and other parts of the house in which the rental unit is located, whether an air conditioning unit had leaked and the duration of an undisputed washing machine issue.

Both parties submitted documentary evidence in support of their testimony such as photographs, copies of product advertisements, witness statements, and copies of e-mail and text message correspondence.

Analysis

Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. As a result, I find that the Tenant bears the responsibility to satisfy me, on a

balance of probabilities, that they are entitled to the compensation sought by them in their Application.

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 32 of the *Act* also states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Further to this, Residential Tenancy Policy Guideline #16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due and that in order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In assessing the Tenant's monetary claim I have therefore considered the above noted sections of the *Act*, the Rules of Procedure and the Residential Tenancy Policy Guidelines.

Although the parties disputed when the rodent infestation in the shed was first identified by the Tenant and brought to the attention of the Landlord or Agent as well as the sufficiency and promptness of the Landlord's response to the infestation, ultimately the parties agreed that a rodent infestation existed in the shed.

During the hearing the Tenant provided inconsistent testimony in relation to when the rodent infestation was first noticed by her and when the Landlord or Agent was first notified of the issue. First, the Tenant testified that she noticed the rodent problem right away at the start of the tenancy. Later the Tenant testified that she did not notice the rodent issue until March of 2018, when she entered the storage shed to get out the lawnmower. The Landlord and Agent acknowledged that rats had been a problem in the past and that the Tenant had been advised of this. They also stated that there were no known active rodent infestations at the start of the tenancy and that no notice was received from the Tenant identifying a rodent issue until either March or May of 2018.

Based on the tenant's inconsistent testimony, I am not satisfied that there was an active rodent infestation at the start of the tenancy in October 2017, or that the Tenant, the Landlord, or the property manager were aware of any such active rodent infestation, should it have existed, at that time. As a result, I find that the active rodent infestation was therefore not identified by the Tenant or brought to the attention of the Landlord or the Agent until March of 2018, as both the Tenant and Agent provided testimony in the hearing that this was the case.

Despite the Agent and Landlord's testimony that the rodent infestation in the shed was dealt with in a timely and sufficient manner, I do not agree. In the Landlord's written statement she said that they had not experienced any rodent issues in the last year *provided* the shed was inspected frequently, poison was laid down and the gaps under the shed doors were covered. There is no evidence before me that the Landlord or the Agent made any attempts to inspect the property between October 2017, and March 2018, or that they made any attempts to lay down traps or cover any gaps under the doors to the shed, despite the fact that they were aware of the potential for a rodent issue. Given that there is no evidence before me that the rodent issue was caused by the Tenant herself, I therefore find the Landlord was responsible for this pest control action pursuant to section 32 of the *Act*.

While I find that the Agent's response to the Tenants initial complaint was timely, I do not however, find that it was adequate. I do not find that sprinkling cayenne pepper is a reasonable alternative to laying poison or traps, especially given the Landlord's prior acknowledgement that fixing gaps, regular inspections, and *poison* have prevented an infestation thus far. As a result, I find that the Landlord breached section 32 of the *Act* by failing to deal with the rodent infestation in an adequate manner.

Having made the above finding, I will now turn my mind to whether the Tenant has satisfied me that a loss was suffered as a result of this breach and the value of any such loss. Although the Tenant stated that her pool, trampoline, and shelving unit were damaged by the rodent infestation, I find that the documentary evidence submitted by the Tenant fails to demonstrate in any reliable way, that the pool, trampoline, or shelving unit were in fact damaged as a result of the rodent infestation. In reviewing the photographs submitted by the Tenant, I find that they do not depict any physical damage to the above noted items and I am not satisfied, given the nature of these items, that the mere presence of rodents or their droppings on or in the vicinity of these items would render them damaged or unusable. As a result, I find that the Tenant has failed to satisfy me, on a balance of probabilities, that any damage or loss has occurred in relation to these items.

Further to the above, although the Tenant stated in the hearing that the pool was worth \$600.00, the trampoline was worth \$987.00 and the shelving unit was worth \$100.00; she did not provide any documentary or other evidence in support of these statements, such as proof of purchase or advertisements for identical or similar products showing their purchase price. As a result, I find that even if I had been satisfied that damage or loss had occurred in relation to these items,

which I am not, the Tenant has not satisfied me on a balance of probabilities of the value of any such damage or loss. As a result, I therefore dismiss the Tenant's claim for compensation for damage or loss in relation to the pool, trampoline, and shelving unit without leave to reapply.

Despite the foregoing, the Tenant provided photographs which I am satisfied demonstrate that a car seat was impacted by the presence of rodents as well as their urine and feces and given the use and nature of this item, I am satisfied that the item could not have been safely used thereafter due to health and safety concerns. As the Tenant provided an advertisement for a comparable model of the damaged car seat, I am also satisfied on a balance of probabilities that it would cost not less than \$69.99 to replace this item.

I have already found above that the Landlord breached section 32 of the *Act* by failing to deal reasonably with the rodent infestation and that the Tenant therefore suffered a loss of \$69.99. As a result, I will now turn my mind to whether the Tenant did whatever is reasonable to minimize this damage or loss. I have already found above that the use and nature of the item is such that mere exposure to rodents and their urine or feces would render the item unusable for health safety reasons. As a result, I find that the car set was, more likely than not, already damaged beyond repair at the time at which the active rodent infestation was first notice in March of 2018. As a result, I find that the Tenant could not have taken further action to mitigate this loss. Based on the above I therefore find that the Tenant is entitled to compensation in the amount \$69.99 for damage to the car seat.

Although some testimony was provided by the parties in the hearing in relation to loss of use of a washing machine and an air conditioning unit during the tenancy, the Tenant provided no testimony or other evidence in relation to the amount of or value of this loss. As a result, I find that the Tenant has not satisfied me on a balance of probabilities, that any monetary loss was suffered or the value of any such loss, should it have occurred. I therefore dismiss this portion of the Tenant's claim without leave to reapply.

Based on the above, and pursuant to section 67 of the *Act*, the Tenant is entitled to a Monetary Order in the amount of \$69.99.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$69.99. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Although this decision has been rendered more than 30 days after the conclusion of the proceedings, I note that section 77(2) of the *Act* states that the director does not lose authority

in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in section 77 (1) (d) of the *Act*.

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: January 23, 2019

Residential Tenancy Branch