Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL; CNR, ERP, LRE, OLC, MNRT, RPP, RR, FFT

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"), pursuant to section 46;
- an order requiring 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;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 62;
- a monetary order for the cost of emergency repairs to the rental unit, pursuant to section 33;
- an order requiring the landlord to return the tenant's personal property, pursuant to section 65;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for her application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 41 minutes.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The landlord stated that he did not receive the tenant's written evidence package consisting of the monetary order worksheet and a $100.00 fridge receipt. He said that he had the remaining evidence from the tenant, as he submitted the same evidence with his application. The tenant said that she left the evidence in the landlord's mailbox sometime in December 2018 but she could not recall the date. The landlord said that he does not have a mailbox for service. As the tenant could not recall the date of service and the landlord did not receive the evidence, I notified both parties that I could not consider the tenant's monetary order worksheet and $100.00 fridge receipt at the hearing or in my decision.

The tenant claimed that she did not receive the landlord's photographs submitted as evidence for the hearing. The landlord said that he did not serve them to the tenant. I notified both parties that I could not consider the landlord's photographs because they were not served to the tenant as required.

At the outset of the hearing, both parties confirmed that the tenant had already vacated the rental unit. I notified both parties that their applications were dismissed without leave to reapply, except for the landlord's application for a monetary order for unpaid rent and the filing fee and the tenant's application for a monetary order for emergency repairs and the filing fee.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to make it pursuant to the *Act*, rather than the *Manufactured Home Park Tenancy Act*. The landlord agreed to this amendment during the hearing. The landlord acknowledged he made his original application in error, as the tenant rented both the manufactured home ('trailer") and the manufactured home site ("pad") from him, making this claim under the *Act*. The tenant agreed. The tenant made her application under the *Act*.

Preliminary Issue – Jurisdiction to hear both Applications

The landlord's application was originally scheduled as a direct request proceeding, which is a non-participatory hearing ("original hearing"). An interim decision, dated November 20, 2018, ("interim decision"), was issued by an Adjudicator for the direct request proceeding. The interim decision was based on the landlord's paper application only, with no submissions made by the tenants. The interim decision adjourned the landlord's hearing to this participatory hearing on January 8, 2019, in order to determine whether the Residential Tenancy Branch had jurisdiction to hear the landlord's application because of rent-to-own tenancy agreement. The landlord confirmed receipt of the interim decision.

At the outset of the hearing, both parties agreed that I had jurisdiction to hear both applications under the *Act*. They agreed that the tenant rented the trailer and pad from the landlord. They agreed that they signed a "residential lease agreement with option to purchase" for this tenancy. A copy was provided for this hearing. They agreed that the rent money of $1,650.00 each month paid by the tenant to the landlord would be payable towards the purchase price of the trailer if the tenant purchased the trailer by the deadline of November 30, 2018, otherwise it was forfeited and counted only towards rent for the tenancy. They agreed that the tenant chose not to exercise this purchase option and that the rent was only towards the tenancy and that both had a residential tenancy rather than a rent-to-own agreement.

Accordingly, I informed both parties during the hearing that I agreed I had jurisdiction to hear both applications as this was a residential tenancy where rent was paid for that purpose, and the tenant did not exercise her option to purchase the trailer by November 30, 2018.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the tenant entitled to a monetary order for the cost of emergency repairs to the rental unit?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. Monthly rent in the amount of $1,650.00 was payable on the first day of each month. No security deposit was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties.

The landlord testified that the tenant had approval to move in on March 7, 2018 and the tenant said that she moved in on April 1, 2018. The landlord said that the tenant moved out on December 14, 2018, while the tenant said that it was on November 30, 2018.

The landlord seeks a monetary order of $1,650.00 for November 2018 unpaid rent and to recover the $100.00 filing fee paid for his application. He said that the tenant failed to pay rent of $1,650.00 for November 2018. The tenant agreed that she did not pay this rent to the landlord and that she attempted to but the landlord refused the rent. She disputes that she owes this money to the landlord.

The tenant seeks a monetary order of $1,083.00 from the landlord plus the $100.00 filing fee paid for her application. She seeks $308.00 for lumber for stairs, $100.00 for plumbing she completed in her bathroom, $225.00 for a gravel driveway that she completed, and $450.00 for her own labour costs for completing the driveway.

The landlord disputes the tenant's claims, indicating that the tenant caused more damages than repairs to the trailer. He claimed that he told the tenant not to make any changes to the trailer until she purchased it because it was his property. He said that the tenancy agreement specifically refers to the fact that the tenant requires written approval prior to completing any repairs. He also noted that the tenant required park approval before completing a gravel driveway but she did not obtain it because the landlord got letters from the park, asking for the tenant to be evicted because she completed this driveway without permission, as well as for other reasons. The tenant said that she was permitted to complete the gravel driveway and she was not given any letters from the park; the landlord claimed that the park does not communicate with tenants, only owners.

Analysis

Landlord's Application

Section 26 of the *Act* requires a tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month, as per the parties' written tenancy agreement in this case.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent of $1,650.00 for November 2018. Rent is due on November 1, 2018 and the tenant lived at the trailer for the entire month of November 2018. Therefore, I find that the landlord is entitled to rental arrears of $1,650.00 for November 2018.

As the landlord was successful in his application, I find that he is entitled to recover the $100.00 filing fee from the tenant.

Tenant's Application

I note that during the hearing, the tenant was at work doing her flagging job and had her work radio activated during the hearing so myself and the landlord could hear it. She did not have her evidence in front of her during the hearing, indicating that she could not get the day off from work for the hearing. Therefore, the tenant was guessing the amounts she was claiming and what items she was claiming.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants 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 landlord 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.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for $1,083.00, without leave to reapply. The tenant did not provide any receipts for the costs that she claimed, failing part 3 of the above test. She did not justify why she wanted to pay herself $18.00 per hour for her own labour to complete the gravel driveway.

As noted earlier, I could not consider the tenant's $100.00 receipt but this was for a fridge, an unrelated claim, because the tenant did not provide proper service evidence.

As the tenant was unsuccessful in her application, she is not entitled to recover the $100.00 application filing fee from the landlord.

Conclusion

I issue a monetary order in the landlord's favour in the amount of $1,750.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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.

The remainder of both parties' applications are 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: January 16, 2019

Residential Tenancy Branch