



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, OLC, MNDC, FF

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 emergency repairs to the rental unit pursuant to section 33;
- authorization to recover his filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. The landlord's counsel (the landlords) stated that the tenant was provided with the submitted documentary evidence by placing it in the tenant's mailbox on January 4, 2019. The tenant disputed that no such evidence has been received. I accept the direct testimony of both parties and find that the landlords have been properly served as per sections 88 and 89 of the Act. The landlord was unable to provide sufficient evidence of service of the submitted documentary evidence. As such, the landlords' documentary evidence is excluded from consideration in this hearing. Both parties were notified that although I could not review the landlord's documents, the landlords were free to provide direct testimony on them. I find that both parties have been sufficiently served with the notice of hearing package and the submitted documentary evidence with the exception noted above as per section 90 of the Act.

Preliminary Issue(s)

The tenant's application was clarified at the outset that today's hearing is for the tenant's monetary claim of \$10,650.00 only. The remaining issues were dealt with in a previous Decision dated December 11, 2018 (File Number noted on cover) and as such cannot be dealt with in this application.

Both parties were also notified that the return of the security and pet damage deposits could only be dealt with when a tenancy ends. As such, this portion of the tenant's application is dismissed with leave to reapply.

The tenant also requested administrative penalties to be made against the landlord. I referred the tenant to make such a request to the Director of the Residential Tenancy Branch as I am not authorized to hearing claims for administrative penalties.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant argued that the landlords have failed to act in complying with the orders made in the Decision dated December 11, 2018.

The tenant seeks a monetary claim of \$10,100.00 which consists of:

\$10,000.00	Compensation, 12 months rent @ \$850.00 per month re: Landlord fail to provide services or facilities as required. (July 1, 2017 to July 2018)
\$100.00	Recovery of Filing Fee

Discussions with both parties clarified that although the monetary claim of \$10,000.00 did not equal the amount detailed of 12 months of rent at \$850.00 the tenant was satisfied with the amount.

The tenant claims that on 3 to 4 occasions during the tenancy, the tenant made requests to the landlord to make repairs, but that the landlord had failed to act. The tenant detailed that he suffered the loss of use of the shower, black mold and rodents in the

unit over the 12 month period. The tenant stated that because of the above noted circumstances, the tenant was only able to reside at the rental unit a few nights out of each week over the entire 52 week period.

The landlord disputed the tenant's claims stating that at no time during the tenancy had the tenant provide any notice of issues to the landlord until being served with an application for dispute in November of 2018. The landlord claimed that after being served, the landlord gave notice of entry to inspect the premises, but was refused entry by the tenant.

The tenant relies primarily on the decision of the noted hearing dated December 11, 2018, which it states in part,

The tenant submitted three letters addressed to the landlords requesting repairs for health and/or safety reasons. The landlord did not deny receiving the letters. The tenant submitted a colour photo of a shower stall and surrounding wall area, which the tenant described supports that there is an ongoing water leak behind the walls and that black mould has formed and that the landlords have refused to address these problems even after repeated requests. The tenant also testified that rats have infested the rental unit and a colour photo was submitted, which supports a hole in the flooring caused by a rat infestation of the rental unit. The tenant stated that there are rat feces throughout the rental unit and that urgent repair is necessary.

The landlord testified that her daughter, MKJ, the other landlord, received a November 11, 2018, email about the black mould and admitted that the landlords have not attended the rental unit to address the tenant's complaints since November 11, 2018.

The landlord did not deny that there were rats in the rental unit during the hearing and provided no evidence to support that a pest control company has been brought in to address the rat infestation problem in the rental unit.

Findings made in that hearing resulted in the Decision ordering the landlord arrange pay for certified professional pest control technicians, plumbers and repair personnel. However, this application is about proper notice of issues of repair for the period July 1, 2017 to July 2018. The applicant was questioned if there was any evidence submitted regarding any notification of repair issues for this period of time and answered "no".

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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.

In this case, it is clear that issues do exist based upon the Decision dated December 11, 2018 however, there is insufficient evidence that notification was given to the landlord for the period of time in question of July 1, 2017 to July 2018. There is also insufficient evidence of when these issues began. The only mention of these issues in the submitted documentary evidence is in the Decision of December 11, 2018 and the requests for repairs in November 2018 which were addressed in that Decision. I also note that the tenant's monetary claim seeks recovery of 100% of the monthly rent although based upon her submission she was still able to reside in the premises 4 out of 7 days. The tenant provided no further details for the calculation. As such, I find on a balance of probabilities that the tenant has failed to provide sufficient evidence of proper notification to the landlord of these issues to allow the landlord to mitigate any issues that might arise.

Conclusion

The tenant's application is dismissed.

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