



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNC ERP PSF MNDC FF

Introduction

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

- cancellation of a One Month Notice to End Tenancy For Cause (the One Month Notice), pursuant to section 47;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 10:00 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing.

The tenant testified that on January 26, 2019 and on January 29, 2019, he sent copies of his original and subsequently "amended" Application for Dispute Resolution and Notice of Hearing to the landlord by registered mail. A registered mail receipt and tracking numbers were provided in support of service.

Based on the above evidence, I am satisfied that the landlord was served with the tenant original and "amended" Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the landlord.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

I am exercising my discretion to dismiss the tenant's application for monetary compensation with leave to reapply as it is not directly related to the other remedies sought and is not of an urgent nature. Leave to reapply is not an extension of any applicable time limit.

At the outset of the hearing, the tenant advised that his tenancy has ended and he has secured alternative accommodation. Therefore, the tenant's applications to dispute the One Month Notice and request for emergency repairs to the rental unit are moot. The tenant advised that he was still seeking an order for the landlord to provide services or facilities even though the tenancy had ended.

Issues

Should the landlord be ordered to provide services or facilities?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The rental unit is an apartment. On December 3, 2018 there was a severe fire directly underneath the tenant's unit rendering the tenant's unit uninhabitable. On December 11, 2018 the tenant was told to come pick up his December 2018 rent cheque and his damage deposit. The tenant vacated the rental unit but argues he was forced to move out.

The tenant submits that although the fire was not directly in his unit, there was lots of smoke damage and possible asbestos contamination in his unit. The tenant is requesting the landlord be ordered to professionally clean and disinfect his personal belongings and provide test results that there is not any asbestos contamination. The tenant submits that he was locked out of his unit after the fire and not able to retrieve any of his personal belongings. The tenant submitted a letter he wrote to the landlord on December 12, 2018 requesting the landlord repair comply with the Act by cleaning and repairing his unit of all smoke damage.

Analysis

Subsection 32(1) of the Act requires a landlord to 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 the tenant.

Section 1 of the Act defines “residential property” as:

"residential property" means

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure located on the parcel or parcels;

The above definition does not include the personal property of a tenant; therefore, there is no obligation under the Act for a landlord to repair and maintain a tenant's personal property as requested by the tenant. This part of the tenant's application is dismissed.

As noted above, the tenancy has ended so I make no orders for the landlord to repair or maintain the rental property.

The tenant has not made an application requesting an order for the landlord to return his personal belongings or provided any evidence that he attempted to contact the landlord in order to retrieve his belongings. The tenant is at liberty to make an application requesting the return of his personal property if the landlord is refusing access to the tenant to retrieve it.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

The tenant's application to dispute a One Month Notice, request for emergency repairs , request for the landlord to provide services or facilities and for recovery of the filing fee are all dismissed without leave to reapply.

The tenant's application for monetary compensation is dismissed with 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: February 21, 2019

Residential Tenancy Branch