



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RP, PSF, AAT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67.
- an order requiring the landlord to complete repairs to the rental unit, pursuant to section 33;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65; and
- an order to allow access to or from the rental unit for the tenant or the tenant's guests, pursuant to section 70.

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 24 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence package.

At the outset of the hearing, the tenant confirmed that she was only pursuing her monetary claim against the landlord. She said that she did not require the remaining relief as the matters were being dealt with. Except for the tenant's monetary application, the remainder of her application is dismissed without leave to reapply.

Both parties agreed that they attended a previous hearing on January 21, 2019, at the RTB for this tenancy and that a decision, dated February 26, 2019, was issued by a different Arbitrator. The file number for that hearing appears on the front page of this decision. In that decision, the Arbitrator dismissed the tenant's monetary claim for appliances without leave to reapply, declared the ongoing rent for this tenancy at \$1,312.50, and dealt with a rent reduction for appliances.

Issue to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

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 the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on January 15, 2018. Monthly rent in the current amount of \$1,312.50 is payable on the first day of each month. A security deposit of \$750.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties.

The tenant seeks a monetary order totaling \$10,814.52. The landlord disputes the tenant's entire claim.

The tenant seeks \$9,000.00 in lost rental income. She said that that she cannot afford the rental unit on her own and she depends on subletting the rental unit. She said that she used to sublet two of the rooms at the rental property to other occupants for \$500.00 each, totalling \$1,000.00 per month. She said that since August 2018, the landlord refused to allow her to sublet the rooms and did not give her a thirty-day notice of this restriction, so she is entitled to nine months of lost rental income from August 2018 to April 2019.

The tenant seeks a reimbursement of \$1,814.52 for repair materials she used at the rental unit. She said that this amount does not include the time and labour she put in

herself to fix things at the rental unit. She claimed that she was told when she moved in that the rental unit will be cleaned and repaired but it was not, so she did repairs herself. She stated that the landlord told her that he would reimburse her for any repairs done by her. She said that her receipts do not add up to the above amount but roughly \$870.00.

The landlord disputes the tenant's claim. He said that the tenant evicted her original sublet occupant in August 2018, after the police were called twice in one night and a stolen trailer was found on the rental property. He stated that since then, he wants to protect his property, and he asked the tenant for a list of people she wanted to sublet the unit to, before he approves it. He claimed that subletting is allowed as long as the landlord is amenable to the occupants, and that this is indicated in the tenant's tenancy agreement. He explained that if the tenant does not disclose information about the occupants, he cannot just agree. The landlord disputed receiving the tenant's repair receipts totalling around \$870.00. He said that the tenant only gave him a pdf document off the national tax website. He maintained that he asked her for receipts for repairs before he could reimburse her but she failed to produce them to him. He claimed that the tenant failed to produce receipts at the previous RTB hearing as well.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant 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 entire application for \$10,814.52, without leave to reapply.

I find that the tenant was unable to justify the repair amount of \$1,814.52 being claimed and this claim is dismissed without leave to reapply. She said that she only had receipts totaling about \$870.00 but was not sure about this amount. During the hearing, the tenant did not go through her receipts, she did not provide a breakdown of repairs

done, she did not indicate what items were bought, she did not indicate the dates when she asked the landlord to complete the repairs, she did not state when he refused to do the repairs, she did not say when she did the repairs, or when the landlord agreed to reimburse her these amounts. She did not produce receipts for the majority of the work done.

Section 34(1) of the *Act* states the following:

Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

The tenant failed to show that the landlord consented in writing to allow the tenant to sublet the rental unit. Both parties signed a written tenancy agreement indicating the same information above on the standard RTB form. Therefore, the tenant's claim of \$9,000.00 for nine months of rental loss from subletting the rental unit is dismissed without leave to reapply.

Conclusion

The tenant's entire application is 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: April 02, 2019

Residential Tenancy Branch