Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT, MNDCT, OLC, RP, RR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on April 11, 2019 (the "Application"). The Tenants applied as follows:

- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities;
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement;
- For an order that repairs be made to the unit;
- To reduce rent for repairs, services or facilities agreed upon but not provided;
- For compensation for monetary loss or other money owed; and
- For reimbursement for the filing fee.

The Tenant appeared at the hearing. H.Y. and M.Y. appeared at the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenant advised at the outset that she vacated the rental unit May 12, 2019. H.Y. said the Tenant vacated May 19, 2019. Given this, the following issues are moot:

- Dispute of a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities;
- Request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement; and
- Request for an order that repairs be made to the unit.

I told the parties I would therefore consider the following:

- Request to reduce past rent for repairs, services or facilities agreed upon but not provided;
- Request for compensation for monetary loss or other money owed; and
- Request for reimbursement for the filing fee.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the parties and all documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to a past rent reduction for repairs, services or facilities agreed upon but not provided?

2. Are the Tenants entitled to compensation for monetary loss or other money owed?

3. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Tenants sought $450.00 as a past rent reduction for repairs, services or facilities agreed upon but not provided. The Tenants also sought $700.00 as compensation for monetary loss or other money owed.

The parties agreed on the following. There was a verbal tenancy agreement between the Landlord and Tenants in relation to the rental unit. The tenancy between the parties started August 01, 2017 and was a month-to-month tenancy. Rent was $2,500.00 per month due on the first day of each month. The Tenants paid $1,250.00 for a security deposit and $400.00 for a pet damage deposit.

$450.00 as a past rent reduction

The Tenant sought a rent reduction for April and May although noted that the amount sought could also apply to March. The rent reduction sought is based on the Tenants' position that the Landlord failed to complete repairs in the rental unit.

These parties had two hearings previously related to the issues raised here. The file numbers for these are noted on the front page of this decision.

The Tenant testified that she had been waiting since August of 2017 for repairs to be made to the rental unit and that this is noted on the Condition Inspection Report. The Tenant testified that the Landlord was ordered twice to do the repairs. The Tenant pointed to letters in evidence asking the Landlord to do repairs.

The decision on File Number 1 was issued May 07, 2018. At page nine of the decision, the Arbitrator stated that the Tenants provided uncontradicted testimony that the Landlord promised to replace the carpets in the living room and the dining room in the rental unit. The Arbitrator further stated at page nine:

> I accept the tenants' uncontradicted evidence that the landlord has promised to replace the carpets and I hereby direct the landlord to do so within one month of the date of service of an Order pursuant to Section 62(3) of the *Act*.

The hearing for File Number 2 occurred February 25, 2019 and the decision was issued March 07, 2019. The parties came to a settlement agreement that included the following:

4) The landlord will arrange for a licensed professional to attend the rental unit and determine what (if any) of the windows need to be sealed by March 11, 2019.
5) The tenants agree to defrost the refrigerator in an attempt to resolve the issue. The landlord agrees to supply the tenants with instructions, in writing, on how to do this. The landlord agrees that if the defrosting does not solve the issue, then she will further investigate the problem.
6) The landlord agrees to arrange for the carpet to be replaced (as ordered by an arbitrator of this branch on May 7, 2018) by the end of March, 2019. The landlord agrees to provide the tenants in writing with, at minimum, one weekend's notice of when the carpet will be replaced, to allow for the tenants to move furniture as necessary.

The Arbitrator made the following further order:

> Accordingly, pursuant to section 62(3) of the Act, I order that, within 60 days of being served with this order by the tenants, the landlord obtain three quotes for the replacement of the bathroom flooring with materials and a design comparable to those of the current floor. The landlord will provide these quotes to the tenants, and the tenants will select one of them to make the repairs. The tenants will be responsible for paying this contractor directly, and must do everything reasonably within their power to allow the contractor to repair the bathroom floor, including pay any deposit in advance of the repairs, as required by the contractor.

In relation to the carpet issue, the Tenant testified that the Landlord was ordered to replace the carpet before March 31, 2019 but never did so. She said rent was previously reduced by $100.00 per month for this issue.

In relation to the window issue, the Tenant testified that she never saw anyone attend the rental unit to inspect the windows. She said that the first time she saw anything about the windows was in the evidence package for this hearing. The Tenant pointed to photos submitted showing the condition of the windows.

In relation to the fridge issue, the Tenant testified that it froze items in it. She testified that the Landlord sent her instructions about defrosting the fridge; however, the fridge did not have frost so she did not understand what the Landlord's recommendation was going to do to solve the issue. She testified that she had just cleaned the freezer and there was no frost build up. The Tenant testified that defrosting the freezer had not fixed the problem. She testified that she told the Landlord defrosting the freezer did not fix the problem. The Tenant pointed to an email submitted in relation to the fridge issue.

In the Application, the Tenants state that the Landlord did not provide quotes for replacement of the bathroom flooring.

I understood H.Y. to testify that the Landlord had not received the letters from the Tenants requesting repairs and that this was discussed at the last hearing.

In relation to the carpet issue, H.Y. said the Landlord had given the Tenants a Two Month Notice and it seemed odd to replace the carpet before the Tenants vacated. Both parties agreed the Two Month Notice was served on the Tenants March 23, 2019. H.Y. advised that the Two Month Notice had an effective date of May 30, 2019.

In relation to the end of the tenancy, H.Y. testified that the Landlord never received written notice that the Tenants were vacating and that the Landlord became aware of this two days before the Tenants vacated. H.Y. testified that the Tenants never paid April rent and acknowledged that May rent was free pursuant to the Two Month Notice.

In relation to the window issue, H.Y. testified that Tenant J.S. was present when the trades person attended the rental unit to look at the windows. She said she is not sure the Landlord had a responsibility to tell the Tenants what they planned to do about the windows.

In relation to the fridge issue, H.Y. said the Tenants agreed to defrost it and the Landlord was to supply instructions. H.Y. said she did supply instructions as directed. H.Y. testified that she never heard back from the Tenants and that the Tenants did not tell her that defrosting did not fix the problem.

In relation to the bathroom, H.Y. pointed out that, pursuant to the decision on File Number 2, the Landlord had 60 days to address the bathroom floor. She said this meant the Landlord had until May 07, 2019. H.Y. said the Landlord did not get quotes or provide them to the Tenants by May 07, 2019 because the Tenants were moving out and the relationship between the parties had deteriorated because the Tenants had not paid rent for two months.

$700.00 as compensation for monetary loss or other money owed

The Tenant testified as follows in relation to the request for compensation. After the hearing in February, the parties emailed back and forth about the issues raised. She is seeking compensation in part for the harassment and stress related to all the emails.

The Tenant testified that there was a “fiasco” with scheduling trades people and the plumber to attend the rental unit and that appointments had to be re-scheduled. I understood the Tenant to submit that this contributed to the stress relating to the tenancy.

The Tenant further testified as follows. Her entire closet was in the dining and living room of the rental unit for two to three weeks because of mold. The Landlord decided to sell the house during this time. The Landlord wanted the real estate agent to attend the rental unit and take photos. The Landlord informed the Tenants of this March 04, 2019. The Tenant did not want her personal belongings shown in the photos. She expressed this concern to the Landlord who did not care. This amounted to harassment

and caused further stress. This affected the Tenants' reasonable enjoyment of the rental unit.

The Tenant also raised the issue of moving costs because of the Two Month Notice. She did not have a receipt for the moving costs. The Tenant said she is seeking the $700.00 compensation for harassment, but the amount is based on the cost of moving.

In relation to there being a "fiasco" with scheduling trades people, H.Y. testified that the Landlord had been asked at the prior hearing to act on repairs and therefore the Landlord was making arrangements with trades people. She said the Landlord had no control over the plumber cancelling.

In relation to selling the rental unit, H.Y. testified that the real estate agent said the rental unit could not be sold in the state it was in. She pointed out that the Landlord would not have wanted photos of the Tenants' closet contents in the dining and living room.

H.Y. submitted that the Landlord had a right to issue the Two Month Notice and therefore should not be responsible for moving costs associated with this.

H.Y. testified that the emails submitted in evidence show the Landlord was respectful and professional when communicating with the Tenants. H.Y. denied that the Landlord harassed the Tenants.

I have reviewed all of the evidence submitted by the parties. I note that much of the evidence relates to the prior hearings or was dealt with in the prior hearings.

Analysis

Section 7(1) of the *Residential Tenancy Act* (the "*Act*") states that a party that does not comply with the *Act* must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.

Section 65(1)(f) of the *Act* states:

> 65 (1) …if the director finds that a landlord…has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders…
>
> > (f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenants as applicants who have the onus to prove the claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

$450.00 as a past rent reduction

In relation to the carpet, the Landlord agreed at the last hearing to arrange for the carpet to be replaced by the end of March. The Arbitrator pointed out that this had been ordered by an Arbitrator previously on May 07, 2018. The Arbitrator ordered this to be done in the decision for File Number 2.

H.Y. acknowledged that the Landlord did not replace the carpet by the end of March. H.Y. said this was because the Tenants had been served with a Two Month Notice and were vacating the rental unit. This is not a basis to fail to comply with the agreement and order made at the previous hearing. The Two Month Notice had an effective date of May 30, 2019, after the deadline for replacing the carpet. Further, the Tenants did not vacate until May 19, 2019, after the deadline for replacing the carpet.

I find the Landlord failed to comply with the order of the prior Arbitrator. As a result of this, the Tenants lived in the rental unit without the carpets being replaced for an additional month and 19 days. This is so despite the Landlord being ordered back in May of 2018 to replace the carpet. I accept that the Tenants are entitled to a past rent reduction for all of April and 19 days of May. I find that a reduction of $100.00 for April is appropriate. I find that a reduction of $62.00 is appropriate for May given the Tenants only resided at the rental unit for 19 days. I find the $100.00 per month appropriate based on the nature of this issue and length of time the Landlord failed to comply with her obligations in this regard.

Based on the invoice submitted, I accept that a trades person attended the rental unit and inspected the windows by March 11, 2019 as agreed upon at the last hearing. There is nothing in the prior decision that required the Landlord to follow up with the Tenants about the window issue. The invoice states that the trades person applied silicone around the master bedroom and living room windows. The trades person recommended window replacement. I am not satisfied based on the evidence pointed to or explained during the hearing that the windows continued to be an issue such that I can find the Landlord breached the *Act*. The photos of the windows submitted are not dated such that I can confirm when they were taken. In the circumstances, I am not satisfied the Landlord has failed to comply with an order of an Arbitrator or failed to comply with the *Act* in relation to the window issue.

In relation to the fridge issue, the email evidence shows the Landlord provided the Tenants with instructions on how to defrost the fridge and freezer on February 28, 2019. The Tenant confirmed receipt of this March 01, 2019 and stated:

> From first glance not sure they apply to this situation as I just cleaned out the fridge and freezer less than two weeks ago and there never was any frost build up whatsoever. I will take a look at them again and see if anything applies.
>
> [emphasis added]

I do not see where in the evidence the Tenants followed up about this with the Landlord. During the hearing, the Tenant pointed to three pages of emails, none of which show that the Tenants followed up with the Landlord about this. I find the Landlord did what was agreed upon at the prior hearing. I find it was the Tenants who were obligated to let the Landlord know if defrosting the fridge and freezer did not work. I am not satisfied the Tenants did so given the conflicting testimony on this point and lack of evidence to

support the Tenant's position. I am not satisfied the Landlord failed to comply with an order of an Arbitrator or failed to comply with the *Act* in relation to the fridge issue.

In relation to the bathroom, I accept that the Landlord did not get quotes or provide them to the Tenants by May 07, 2019 as agreed at the previous hearing as H.Y. acknowledged this. I do not accept that the issuance of the Two Month Notice is a basis to fail to comply with the agreement made at the previous hearing. Again, the Two Month Notice had an effective date of May 30, 2019, after the deadline for providing the quotes. Again, the Tenants did not vacate until May 19, 2019, after the deadline for providing the quotes.

I find the Landlord failed to comply with an order of a prior Arbitrator. However, I note that the Tenants were going to pay for the repair because they removed part of the flooring. Therefore, I do not find that the Landlord's non-compliance has reduced the value of the tenancy. Further, I note that the Tenants were only in the rental unit for a further 12 days. In the circumstances, I am not satisfied the Tenants are entitled to a rent reduction for the bathroom issue.

$700.00 as compensation for monetary loss or other money owed

I have reviewed the emails between the parties submitted as evidence. I do not accept that any of the emails amount to harassment. All the emails relate to the usual communications between landlords and tenants when parties are attempting to deal with issues in the rental unit or a landlord is attempting to sell the rental unit. None of the language used on behalf of the Landlord in the emails is inappropriate. I agree with H.Y. that all of the Landlord's communications are respectful and professional.

I do not accept that the Landlord breached the Tenants' right to quiet enjoyment in relation to the "fiasco" with scheduling trades people. The Tenants wanted repairs done as is clear from the prior hearing. The natural consequence of this is that the Landlord needed to arrange to have trades people attend the rental unit. I do not accept based on the emails submitted that the Landlord was doing anything other than attempting to fulfill their obligations in relation to the repairs. I do not accept that the Landlord is at fault for the plumber needing to be rescheduled.

I do not accept that the Landlord breached the Tenants' right to quiet enjoyment by looking into selling the rental unit. The Landlord was entitled to do this as the rental unit is the Landlord's property. I find nothing unusual about the Landlord having a real estate agent attend the rental unit. The emails submitted show that the Landlord told

the Tenants they could move their personal belongings if they did not want them in the photos taken. I find this to be a reasonable response as the Landlord was entitled to have photos of the rental unit taken to assist in selling the rental unit. There is nothing about this issue that amounts to harassment or a breach of the right to quiet enjoyment. Nor do I find the Tenants are entitled to compensation because the Tenant found this stressful.

The Tenants have failed to show the Landlord breached their right to quiet enjoyment by harassing them or causing an unusual amount of stress. Therefore, the Tenants are not entitled to compensation for this.

Given the Tenants were partially successful in this application, I award them reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

I acknowledge that H.Y. testified that the Tenants did not pay rent for April or May. I also acknowledge that rent for May was free pursuant to the Two Month Notice. The Landlord did not file a cross-application claiming for unpaid rent and therefore I have not considered this issue. I award the Tenants a Monetary Order for $262.00. I find it appropriate to treat the $62.00 awarded as a rent reduction for May as compensation as the value of the tenancy was reduced by this amount.

Conclusion

The Tenants are entitled to $262.00 and I award them a Monetary Order in this amount. This Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 25, 2019

Residential Tenancy Branch