Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, LRE, LAT, RR, FFT

Introduction

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

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Landlord KW (the landlord) confirmed that they are the owner of this property and that Landlord LM (the agent) was looking after communication with the tenant until April 2019 when the landlord returned from work in another province. The landlord confirmed that the agent is no longer managing the property on the landlord's behalf, and as such, any monetary award issued in the tenant's behalf would properly be directed against the landlord.

As both Respondents confirmed that they received a copy of the tenant's dispute resolution hearing package sent by registered mail on July 18, 2019, I find that the Respondents were duly served with this package in accordance with section 89 of the *Act.* Since both parties confirmed that they had received one another's written

evidence, I find that the written evidence was served in accordance with section 88 of the *Act*, with the exception of a very late rebuttal submission provided by the tenant a few days before this hearing. Although I have not considered the tenant's late written submission as it did not comply with the Residential Tenancy Branch's Rules of Procedure, I permitted the tenant to read into the oral record of this hearing anything from that late written submission that the tenant wished to have considered.

Preliminary Issues

Near the beginning of this hearing, the tenant said that some of the concerns raised in their application had been resolved before this hearing commenced. The tenant said that the parties now had a proper understanding regarding the landlord's right to enter the rental unit and that there was no longer any need for the issuance of an order enabling the tenant to change the locks to the entrance of the rental unit. On this basis, the tenant's applications for the following are hereby withdrawn:

- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70.

The tenant also confirmed that the landlord has addressed the concerns raised by the tenant about the adequacy of the freezer and a new dishwasher was installed on September 4, 2019. As these issues are resolved, there is no need to consider the tenant's request for an ongoing rent reduction for the deficiencies in these appliances; however, the tenant's request for a retroactive rent reduction for these deficiencies remain before me.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy, including the loss in value of this tenancy for the alleged inadequacy of services and facilities that the tenant expected to receive as part of their tenancy agreement? Should any orders be issued to reduce the rent for this tenancy? Should any other orders be issued with respect to this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous documents and receipts, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The agent (acting on behalf of the landlord) and the tenant signed a Residential Tenancy Agreement (the Agreement) on September 25, 2017, for a tenancy that was initially to run from October 15, 2017 until October 14, 2018. When this initial term expired, the tenancy continued as a month-to-month tenancy. According to the terms of the Agreement entered into written evidence, monthly rent of $2,800.00 is payable in advance on the first of each month. The landlord continues to hold the tenant's $1,400.00 security deposit and $1,400.00 pet damage deposit, paid on October 1, 2017. The agent and the tenant conducted a joint move-in condition inspection on October 14, 2017, and a copy of the report of that inspection was created by the agent at that time, a copy of which was entered into written evidence.

Although the tenant applied for a monetary award of $2,632.97, plus the return of their filing fee, the tenant did not enter into written evidence any Monetary Order Worksheet, or even a summary of how the tenant arrived at this requested amount of monetary award. As this part of the tenant's application was unclear to me, and no doubt the landlords, I asked the tenant to outline the breakdown of their claim for this monetary award. The tenant gave sworn testimony as to the following details of their monetary claim, mentioning that they had expected to have a discussion with the landlords at the hearing as to the amount of their claim.

Item	**Amount**
Veterinarian's Bill for Tenant's Dog - November 19, 2018	$700.01
Veterinarian's Bill for Tenant's Dog - December 4, 2018	555.00
Excess Hydro Bill for a 2 Month Period due to Hot Water Problems (2 x $180.00 = $360.00)	360.00
Excess Water Bill	170.00
Lack of Hot Water for a 2 Month and 1 Week Period	400.00
Lack of a Properly Functioning Dishwasher (2 years @ $50.00 per month = $1,200.00)	1,200.00

Replacement of a Lock on the Shed	30.00
Total of Above Items	**$3,415.01**

As noted above, the tenant also requested the recovery of the $100.00 filing fee for their application.

Although I did not tally up the total of the amounts stated in the tenant's sworn testimony, I did note to the parties at that time that the amounts cited in the tenant's sworn testimony certainly appeared to be more than the $2,632.97 identified in the tenant's application for a monetary award.

The tenant maintained that the veterinary bills were for the one dog that the tenant had advised the landlord that they would be keeping in this rental unit. The tenant alleged that this dog became ill as a result of a leak in the septic system, which permitted the dog to ingest items from the septic system requiring veterinary treatment. The tenant supplied bills to document their expenditure on these items.

The landlord and the agent gave undisputed sworn testimony and written evidence that the tenant was actually keeping two large dogs in the rental unit in contravention of their Agreement and that the tenant's bills do not clarify which of the two dogs became sick and required treatment on December 4, 2018. The landlord provided written evidence questioning whether the tenant's failure to provide detailed information about the treatment in December 4, 2018 resulted from the treatment of the dog that is not permitted on the premises as part of the Agreement. While the landlord did not deny that the septic system did malfunction for a short period of time, they outlined their interaction with the supplier of that system and how their capping of a pinhole section of the line had resolved this problem. They also maintained that the Agreement called for the tenant to look after all yard maintenance, which would have included covering over the exposed portion of the septic system such that water from that system would not spray into the yard and be accessible to the dog which the tenant was legally allowed to keep on the premises. The agent maintained that there is still a hole in the yard that the tenant has failed to cover to prevent the tenant's dogs from becoming exposed to potential problems arising from the septic system. More importantly, the agent who was then managing the rental unit could not recall the tenant having raised concerns about the deterioration of the septic system in November 2018.

The tenant provided sworn testimony supported by written evidence that they first spoke to the agent about a hot water leak sometime in February 2019. When the leak became more pronounced by the beginning of March 2019, the tenant advised the agent again that the leak was presenting a problem and needed to be fixed. The tenant referenced

a March 2018 text message received from the agent advising that someone, likely the landlord's father who looked after many of the handyman duties for this property while the landlord was out of the province, would be coming to inspect the leak shortly. The tenant testified that they were told to shut the hot water off altogether. Prior to that time, the tenant claimed to have been advised the landlord's father that the solution to reducing expenses incurred for hot water might required a hole to be cut in a ceiling and the installation of a shut off valve in the garage. The tenant gave undisputed evidence that the repairs to the hot water leak were not completed until May 4, 2019.

The tenant maintained that during the period from March until May 2019, that their hydro bill increased to twice its normal rate, which the tenant attributed to the cost of heating hot water that was leaking from the faucet. The tenant estimated that their hydro costs were $180.00 more than they should have been for each of the two months when this problem was happening. They also maintained that their water bills were three times more than normal over this period. At the hearing, the tenant could not locate the water bill, but said that they incurred $170.00 in extra costs for water over this period. Although the tenant submitted partial copies of some hydro and water bills, these were in the form of partial screenshots, which did not provide any figures with respect to overall costs.

While the tenant maintained that the period when they were experiencing problems with the hot water leak extended for a two month and one week period, the landlord claimed that this problem did not last that long. The landlord said that they had requested copies of bills from the tenant to enable the landlord to assess the extent to which the tenant's utility bills increased over the period in question, but the tenant has not provided these detailed bills to the landlord. The landlord said that the hot water problem involved a malfunctioning valve that was under a lifetime warranty. It took longer than expected to obtain replacement parts, although the landlord made three separate orders for these parts from the manufacturer. The landlord said that they eventually paid $800.00 or $900.00 to source out acceptable replacement parts and have them installed so that hot water could be restored to the rental property. The landlord also said that at the beginning of tenancies, he always shows the tenants where the shut off valve for the water is located, so that they can turn off the water and, thus prevent new water from feeding into the hot water tank. The landlord said that had the tenant used this simple method of preventing water loss and hydro loss, their expenses could have been dramatically reduced over the period when the repairs were being made.

The landlord also testified that the tenant has made a regular practice of consulting with the landlord's father with respect to concerns about the operation of services and facilities within this rental property. The landlord gave undisputed sworn testimony that their father has never been identified by the landlord as the landlord's agent with respect to this rental. The landlord claimed that any information attributed to their father, such as the allegation regarding the need to cut a hole in the garage to install a new shut off valve, was not information provided by an authorized agent of the landlord.

The parties provided conflicting testimony and written evidence with respect to the tenant's claim that the dishwasher never worked properly and did not clean dishes. The parties agreed that the tenant initially contacted the agent about problems with the dishwasher. The agent testified that the problem at that time was presented as broken wheels on one of the trays of the dishwasher, which the agent had replaced such that this tray could run properly on the dishwasher track. The agent said that they had not heard from the tenant about any problems with the dishwasher since fixing the wheels on the tray during the early part of this tenancy. By contrast, the tenant said that they were only able to use the dishwasher three or four times during the course of this tenancy. The tenant said that they raised this issue with the agent from the early part of this tenancy, but that the agent and the landlord did not seem very interested in undertaking any further repairs or inspections on this or many of the other features that the tenant found deficient in this tenancy, such as the freezer.

The landlord did not dispute the tenant's application for a monetary award of $30.00 to replace the lock on the shed. The landlord said that they would have appreciated hearing about this problem directly from the tenant before the tenant undertook replacing that lock, as the landlord had a number of locks that could have been used for this purpose.

The landlord also maintained that permission had never been given to the tenant to sublet a portion of the rental unit to another occupant who lives below the tenant. The tenant claimed that the landlord knew about this sublet early in this tenancy and never raised any concerns about this other person living there.

The tenant also supplied photographs of a damaged handle on the dryer for this rental unit and photographs of the freezer, which the tenant maintained was not functioning properly for much of this tenancy. The tenant also alleged that the landlord had failed to provide the tenant with a functioning vent above the stove, as the fan within that vent had not been functional during this tenancy. The tenant said that they notified the agent of problems with the vent and that the landlord had not done anything to repair this

feature of the tenancy. The landlord and agent claimed that the first notice that they had received about these deficiencies was by way of the tenant's application for dispute resolution. The landlord testified that the dryer was a new one installed in the rental unit three months before this tenancy began, and that any damage which has occurred must have resulted from the tenant's actions. The landlord said that they would have someone come into the rental unit and fix the fan above the stove within two weeks of this hearing.

The tenant also provided a photograph of mould, which the landlord maintained was actually the head of a nail which was exposed in one of the ceilings.

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, the onus is on the tenant to prove on the balance of probabilities that there was a loss in value of their tenancy or that expenses or losses occurred for which the landlord should be held responsible.

Section 32(1) of the *Act* reads as follows:

> ***32*** *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*
>
> > *(a) complies with the health, safety and housing standards required by law, and*
> >
> > *(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

In considering the tenant's claim for a monetary award and a retroactive rent reduction, I will provide some general comments and then examine each of the portions of the tenant's claim as outlined in the order in the above-noted table.

I should first note that I found the tenant's sworn testimony somewhat unclear as to the amounts that the tenant was seeking in their application. Although they provided a very specific amount that they were requesting, their sworn testimony on the breakdown of how they arrived at that figure suggested that they had given little thought before this hearing as to the component parts of their claim for a monetary award of $2,632.97. At times, it appeared to be the first time that the tenant had considered how much they were seeking as reimbursement for portions of their claim. While this does not disqualify a party from entitlement to such claims, it did make it somewhat difficult for the landlords to know the case against them and to adequately prepare to respond to the tenant's claim for a sizeable monetary award.

I also note that the written evidence presented by the tenant did little to assist in establishing whether the tenant's claim for compensation for the leaking water faucet accurately reflected the tenant's true losses. The fragmentary portions of screenshots produced by the tenant certainly provided little clarity as to the monetary implications of any extra costs which the tenant incurred as a result of this problem.

This lack of written evidence from the tenant extends to the tenant's assertions that they raised concerns about various deficient features of this tenancy to the landlord or their agent during the course of this tenancy. The tenant's recollections of when and whether issues were raised with the landlord or their agent was often disputed by the landlord and their agent. Without some record of a number of these interactions, it is difficult to confirm with the level of certainty required the tenant's entitlement to monetary awards for alleged deficiencies in this tenancy that were not addressed within a reasonable period of time by the landlord.

I also find considerable merit to the landlord's assertion that the tenant's preference to speak with the landlord's father and to rely on information provided by the landlord's father is no substitute for communicating directly either with the landlord or the landlord's designated agent who managed this property until April 1, 2019. While the landlord's father may often perform tasks for the landlord at this rental property, there is no evidence that the landlord's father has ever been identified by the landlord as their agent with respect to this tenancy.

Turning to the tenant's application for a monetary award, I first address the tenant's application to recover the costs of veterinary bills of November 19 and December 4, 2018. In this regard, I find that there is some information accompanying the November 19, 2018 bill to confirm that the tenant's dog was provided with emergency treatment for some type of gastrointestinal problem inducing vomiting that date. The tenant maintained that this resulted from their dog's ingestion of contaminated substances emanating from a leak in the septic system that had been allowed to deteriorate without the landlord's resolution of this problem. The tenant advised that they had contacted the agent about this matter prior to their dog taking ill; the agent could not recall having been contacted by the tenant about this issue in November 2018.

While sympathetic to the tenant's incursion of these veterinary costs, I find that the tenant has supplied insufficient evidence to demonstrate that the landlord is responsible for failing to repair the septic system such that the tenant's dog became ill. In this regard, there is little information provided by the veterinary clinic that would indicate that the dog became ill as a result of ingesting substances from either the water or substances on the ground surrounding what the landlord described as a pinhole leak. It is extremely difficult to ascertain how a dog left unattended becomes ill. Even if I were to accept the tenant's sworn testimony and written evidence that they did notify the landlord of the problem with the septic system in November 2018, prior to their dog taking ill, it would then seem that the tenant knew about this problem and did little to either prevent their dog from becoming exposed to problems in that part of the property. While similar problems weigh against the eligibility of the tenant for the recovery of costs for the December 4, 2018 veterinary bill, in addition, there are questions as to whether the tenant exercised due diligence in preventing one of their dogs from accessing the same part of this property after having incurred an expensive veterinary bill only a few weeks earlier. Since I am not satisfied that there is justification to order the landlord to reimburse the tenant for either of these veterinary bills, I dismiss this part of the tenant's application.

I accept that the tenant is entitled to a monetary award for the delays incurred in obtaining repairs to the hot water faucet in the rental unit. Although the tenant maintained that this situation occurred during a period of two months and one week, the landlord would normally be allowed some time to identify and resolve such a problem, especially one where the malfunctioning part was under warranty. As access to hot water is clearly a service that the tenant anticipated receiving as part of their tenancy, I allow the tenant's requested application for a monetary award of $200.00 for each of the two full months when the tenant lacked this feature in their tenancy.

Although I accept that the tenant likely did incur some extra hydro and water costs associated with the leaking faucet, the tenant's written evidence in this regard is incomplete to the point where it is very difficult to establish the tenant's true losses in this regard. Even the tenant's sworn testimony on the subject of the additional water costs incurred seemed hesitant and uncertain. I also must take into account the landlord's claim that these costs could have been mitigated had the tenant followed the simple procedure of turning off a shut-off valve that was easily accessible and was noted at the time that this tenancy began. In this regard, though I note that the agent was looking after this tenancy began as the landlord was working in another province. There is little evidence that the tenant was shown where this shut off valve was located, even though this was the landlord's normal practice when the landlord was present during a joint move-in inspection.

Under these circumstances, I allow the tenant a somewhat nominal monetary award of $200.00 for the tenant's added hydro and water costs that occurred during the period when the faucet was leaking hot water. I do so as I recognize that there was likely some extra cost, albeit not properly quantified by the tenant during this period.

Based on the evidence before me, I find that there is insufficient evidence to demonstrate that the tenant raised ongoing concerns with the landlord with respect to the dishwasher after the landlord replaced wheels on one of the trays in that appliance early in this tenancy. I dismiss this aspect of the tenant's application.

For similar reasons, I also decline to award any monetary award for problems associated with the freezer for similar reasons as the claim for the dishwasher was dismissed. In addition, I accept the landlord's written evidence that this problem likely resulted from dog hair and dust clogging the compressor

I award no monetary award for the lack of a functioning vent/fan above the stove as the tenant has provided insufficient evidence to dispute the landlord's claim that this issue was not raised with the landlord or the agent until the tenant filed their application for dispute resolution. I do order the landlord to have this vent/fan serviced or replaced with a functioning vent/fan before October 1, 2019.

I also issue a monetary award in the amount of $30.00 to enable the tenant to recover the cost of replacing the locking mechanism in the shed.

I also allow the tenant to recover their $100.00 filing fee for this application as the tenant has been partially successful in this application.

I make no other findings with respect to the tenant's application as I find that the tenant has not established entitlement to any other orders with respect to this tenancy.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to reduce rent for a reduction in the value of their tenancy due to services and facilities not provided that the tenant reasonably anticipated would be provided in their tenancy agreement, for expenses and losses incurred by the tenant for which the landlord is responsible and to recover their filing fee:

Item	**Amount**
Recovery of Part of the Tenant's Water and Hydro Bills over the period when the faucet was not functioning properly	$200.00
Lack of Hot Water for a 2 Month and 1 Week Period	400.00
Replacement of a Lock on the Shed	30.00
Filing Fee	100.00
Total Monetary Order	**$730.00**

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. As this tenancy is continuing, the tenant may also choose to deduct this amount from future rent payments, provided that they advise the landlord of the reason for such a reduction in their monthly payment for that month or months.

I order the landlord to have the vent/fan above the stove in this rental unit serviced or replaced before October 1, 2019 such that this feature functions properly.

The tenant's applications for the following are withdrawn:

- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70.

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: September 13, 2019

Residential Tenancy Branch