



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, OLC

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;

The landlords did not attend this hearing, although I left the teleconference hearing connection open until 11:13 a.m. in order to enable them to call into this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant gave sworn testimony that they sent both landlords copies of their original and amended dispute resolution hearing packages and their written evidence by registered mail on September 7 and 11, 2019. The tenant also provided the Canada Post Tracking Numbers to confirm these mailings. The tenant testified that Canada Post's Online Tracking System revealed that these documents were successfully delivered to the landlords. Based on the tenant's undisputed sworn testimony and in accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were deemed served with these documents on the fifth day after their registered mailing.

At the commencement of this hearing, the tenant withdrew their application to cancel the 10 Day Notice, as they said that they vacated the rental unit on October 15, 2019. The tenant's application to cancel the 10 Day Notice is hereby withdrawn.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Should any other orders be issued with respect to this tenancy?

Background and Evidence

This tenancy began on May 15, 2015. On April 17, 2018, the parties signed a new one-year fixed term Residential Tenancy Agreement that was to cover the rental period from April 17, 2018 until April 17, 2019. Monthly rent was set at \$850.00. Although the tenant paid a \$400.00 security deposit when this tenancy began, the tenant testified that they have already received a return of that deposit from the landlords.

On March 1, 2019, another Arbitrator appointed pursuant to the Act issued a decision with respect to the tenants' application for repairs and a monetary award for the loss in the value of their tenancy (see reference above). In that decision, the presiding Arbitrator made the following findings and issued the following orders:

I HEREBY ORDER THAT:

1. *Pursuant to section 62(3) of the Act, the landlords must comply with the Act by completing the following repairs to the rental unit:*
 - i. *complete replacement of, and installation of new, drywall and insulation on the wall on which the kitchen cabinets are attached;*
 - ii. *complete replacement of the floor of the rental unit which must include repair and sealing of any cracks in the concrete/cement, and that the new floor include an underlay*
2. *The above-noted repairs and installation must be completed within 6 weeks of the date this Decision is served on the landlords.*
3. *Upon completion of the above-noted repairs and installation, the landlords must have a residential mold testing completed from a Certified*

Residential and Commercial Mold Inspector, and a copy of the inspector's report be provided to the tenant, within 4 weeks of the completion of the repairs and installation.

4. *Pursuant to section 65(1)(f) of the Act, future rent is reduced by, and the tenant may deduct from future rent, \$483.07 per month from April 1, 2019 to September 1, 2019, inclusive...*

Despite the issuance of the above orders, the tenant gave undisputed sworn testimony that the landlords have failed to undertake any of the repairs ordered by the presiding Arbitrator on March 1, 2019. The tenant said that they have been paying monthly rent of \$366.93 from April 2019 until August 2019.

The tenant provided sworn testimony and written evidence that they gave the landlords their notice to end this tenancy on August 27, 2019. In that notice, the tenant advised that they intended to end their tenancy by October 27, 2019. They also testified that they did not pay any rent for the months of August and September 2019. They said that the last monthly rent they paid was \$366.93 for July 2019.

The tenant's claim for a monetary award of \$783.86 was to enable them to pay for moving costs that they would be incurring as a result of the landlords' refusal to follow the orders issued by the previous Arbitrator.

At the hearing, the tenant reduced the amount of this requested monetary award to \$733.86, the amount of monthly rent that they did not pay for August and September 2019. They also maintained that since their tenancy began mid-month and their signed Residential Tenancy Agreement identified the 17th day of the month as their final date of their term, they would be able to remain in the rental unit until that day, although they vacated on October 15, 2019.

The tenant said that they were not interested in obtaining a monetary Order, only a decision confirming that they were allowed to not pay the equivalent of two month's rent for August and September 2019.

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 the landlords have contravened the *Act*, and have refused to abide by the Orders issued by the previous Arbitrator, and they are entitled to compensation as a result of the landlords' lack of action to conduct the repairs ordered.

Section 7(1) of the *Act* establishes that a party who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the other party for damage or loss that results from that failure to comply.

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent."

In this case, the tenant did not have a decision from an Arbitrator enabling them to deduct any rent that was due for the months of August or September 2019. However, based on the tenant's undisputed sworn testimony, I find that there has been a lengthy period where the landlords have ignored the Order issued by the previous Arbitrator, resulting in a significant loss in the value of this tenancy. Since this repair work was to have been completed between April 1 and April 14, 2019, I find that the revised \$733,86 amount claimed by the tenant for the loss in value of their tenancy arising out of the landlords' actions represents a fair estimate of their loss in the value of their tenancy that resulted for the period from April 1 through the end of this tenancy.

I also find that the tenant is not responsible for paying any rent for the month of October 2019, as their tenancy commenced on the 17th of the month. The tenant has provided undisputed sworn testimony and written evidence that the monthly payments made have been in advance and the only non-payments of monthly rent when it became due were for the two months of August and September 2019.

Since the \$733.86 amount awarded to the tenant is identical to the amount of rent that the tenant admitted was not paid at the end of this tenancy, no monetary Order results from this application. I make this determination pursuant to sections 26(1) and 72 of the *Act*, since rent in that amount was owed to the landlord by the tenant.

Conclusion

I allow the tenant's application for a monetary award of \$733.86. In accordance with the offsetting provisions of section 72 of the *Act*, I issue no monetary Order with respect to this tenancy. I find that no money is owed by either party to one another at the end of this tenancy.

The tenant's application to cancel the 10 Day Notice is withdrawn.

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: October 29, 2019

Residential Tenancy Branch