



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, MNDCT

Introduction

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

- a Monetary Order for damage or compensation pursuant to section 67 of the *Act*; and
- an Order to reduce the rent for repairs, services, or facilities agreed upon but not provided pursuant to section 65 of the *Act*.

The tenant attended at the date and time set for the hearing of this matter, with her mother assisting her. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 2:32 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding documents for this Application. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

As only the tenant attended the hearing, I asked the tenant to confirm that she had served the landlord with the Notice of Dispute Resolution Proceeding and evidence for this hearing. The tenant testified that she personally served the landlord on July 15, 2019 while he was in his vehicle. The tenant submitted into documentary evidence a photograph she testified that she took of the landlord sitting in his vehicle receiving documents from the tenant.

Therefore, based on the unchallenged testimony of the tenant, I find that the landlord was served with the notice of this hearing and the tenant's evidence in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to a reduction in rent for repairs, services or facilities not provided?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence. The tenant testified to the following details pertaining to this tenancy:

- This tenancy began December 1, 2018.
- Monthly rent of \$750.00 is payable on the first of the month.
- At the beginning of the tenancy, the tenant paid a security deposit of \$500.00 which continues to be held by the landlord.
- The tenant confirmed that on Page 2 of the written tenancy agreement, in section 3. b), which sets out what is included in the rent, it is stated that “no kitchen” was included. I further note, in that section, it is stated that “no blinds or drapes” and no recycling services are included.

The tenant submitted two separate dispute applications (both file numbers are noted on this Decision). The first claim sought a reduction rent of \$5,000.00 as a result of the lack of kitchen facilities provided in the rental unit. The second claim sought: reimbursement for costs associated with the preparation of this application and prior applications for dispute resolution between the parties; the cost of “trash bags”; and the cost of internet service.

The tenant provided unchallenged testimony that although her tenancy agreement clearly stated that no kitchen was included in rent, it was her understanding that a kitchen would be provided soon after the start of the tenancy. The tenant submitted into evidence a text message exchange with the landlord, dated December 29, 2018 in which the tenant asks when the kitchen will be installed and the landlord responded as follows, in part:

..Final inspection is not pass yet. City hall is closed. I did not say kitchen we build in Jan. As soon as we pass inspection.

(Reproduced as written)

Regarding the tenant's other claim for compensation, the tenant testified that the internet connection is not stable and cuts in and out. As such, the tenant sought compensation for the cost of internet service, however, the tenant confirmed that she has not purchased separate internet service, but she was providing an estimate of the cost of that service.

The tenant testified that she has to purchase bags for her garbage and for taking the recyclables to the depot and that she was seeking reimbursement for the cost of the purchase of trash bags.

Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6, the claimant bears the burden to prove the merits of their claim. Where the claiming party has not met each of the above-noted four elements, the burden of proof has not been met and the claim fails.

The tenant's heads of claims are addressed below as set out in the two Applications for Dispute Resolution filed by the tenant.

1) Claim for Reduced Rent of \$5,000.00

The tenant testified that it was her understanding that a kitchen would be provided soon after the start of the tenancy. However, I note that the tenancy agreement stated that “no kitchen” is included with the rent. As explained above, compensation for loss under the *Act* requires that the claimant provide sufficient evidence to meet the burden of proof for their claim that the other party, which is the landlord in this matter, contravened the *Act*, regulations or tenancy agreement.

Based on the testimony and evidence before me, on a balance of probabilities, I find that the tenant failed to provide sufficient evidence to establish that the landlord contravened the *Act*, regulations or tenancy agreement by failing to provide a kitchen as it was clearly stated that a kitchen was not included in the rent.

Given the above, I find that the tenant has not satisfied **all** elements of the test for compensation in relation to this claim. Therefore, the tenant’s claim to reduce rent due to the lack of a kitchen must be dismissed without leave to reapply.

2) Compensation for Dispute Preparation Costs, Trash Bags, Internet Service

Administrative costs related to the preparation of an application for dispute resolution, such as printing, photocopying, registered mail, etc. are not recoverable under the *Act*. The *Act* only provides for the recovery of the cost of the filing fee, which in this case, the tenant did not pay as she received a fee waiver. As such, the tenant’s claim to recover these costs is declined.

Trash bags are not a cost attributable to the landlord, even if garbage collection is included in the rent under the tenancy agreement. If the trash bags were used for the disposal of recyclables, again this is not a cost attributable to the landlord, and further I note that recycling services were not included in the rent under the tenancy agreement. As such, the tenant’s claim to recover these costs is declined.

The tenant claimed that the internet service included in her rent was not reliable as it would cut in and out. The tenant submitted evidence regarding the cost of other internet service packages. The tenant did not submit any evidence regarding the type of internet service currently provided and any testing done to address her concerns regarding the quality of the service, nor did the tenant submit any documentary evidence that she had notified the landlord of her concerns regarding the internet

service so that the landlord would have an opportunity to contact the internet service provider to address the issues.

Therefore, I find that the tenant submitted insufficient evidence that the tenant notified the landlord of the internet issues to provide the landlord an opportunity to address the problem. As such, based on the testimony and evidence before me, on a balance of probabilities, I find there is insufficient evidence to establish that the tenant made reasonable efforts to mitigate her internet access issues by notifying the landlord of the issue to make attempts to resolve the issue with the internet provider, and further, the tenant has not established that she incurred a monetary loss due to issues with the internet access.

Given the above, I find that the tenant has not satisfied **all** elements of the test for compensation in relation to this claim. Therefore, the tenant's claim for compensation for these items is dismissed without leave to reapply.

Conclusion

The tenant's Applications are 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: October 24, 2019

Residential Tenancy Branch