Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL CNL-4M FFT MNDCT MNRT OLC

Introduction

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

- recovery of the filing fee from the landlords pursuant to section 72 of the *Act;*
- cancellation of a 2 Month Notice to End Tenancy pursuant to section 49 of the *Act;*
- a Monetary Order as compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*; and
- an Order for the landlords to comply with the *Act* pursuant to section 62 of the *Act*.

All named 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.

The landlords confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidentiary package by way of Canada Post Registered Mail, while the tenant confirmed receipt of the landlords' evidentiary package. All parties are found to have been duly served in accordance with section 88 & 89 of the *Act*.

At the outset of the hearing, the tenant explained that he had vacated the rental unit on October 10, 2019 and would therefore only be pursuing the Monetary Order and the return of the filing fee. As per the tenant's request, all portions of the tenant's application other than the Monetary Order and the return of the filing fee are withdrawn.

Following opening remarks, the tenant confirmed that he wished to lower the amount sought in his application for a monetary award to $11,987.90. As the landlords would not be prejudiced by this change, I amend the tenant's application pursuant to section 64(3)(c) to reflect this new amount sought.

Issue(s) to be Decided

Is the tenant entitled to a monetary award? Can the tenant recover the filing fee?

Background and Evidence

The tenant explained this tenancy began on September 24, 2017 and ended on October 10, 2019. Rent was $925.00 per month, while a security deposit of $450.00 was paid at the outset of the tenancy. The tenant confirmed the security deposit with some agreed deductions was returned following the conclusion of the tenancy.

The tenant is seeking a monetary award of $11,987.90 as follows:

ITEM	**AMOUNT**
Verbal estimate – Flux Electrical	$400.00
Home Depot ventilation supplies	76.16
NEMA 14-50 adapter	169.07
Car charging	36.00
Car Charge notifications	206.67
Breach of RTA for false eviction	11,100.00
TOTAL =	**$11,987.90**

The tenant alleged he was the victim of an illegal eviction and argued the landlords had no good faith when they issued a 2 Month Notice to End Tenancy for Landlord's Use of Property on September 14, 2019. The tenant's monetary application largely reflected compensation he sought for a "dubious" eviction. He said that he did not believe the landlords would use the rental unit for the purposes listed on the notice. The tenant argued that the relationship between the parties had broken down and said the landlords were simply looking to "get me out".

In addition to the $11,100.00 sought for "illegal eviction" the tenant listed several items which he said were expenses that he incurred either during or following the tenancy. Specifically, the tenant wished to recover the costs associated with installing an electric

car charging station (along with associated hardware) at his new rental unit. He stated that these costs were ones he should not have to absorb as he had been the victim of an “illegal eviction.” Furthermore, the tenant sought compensation for costs incurred during the previous tenancy related to charging of his electrical car at a “super charge” station located in the parking lot of a nearby Wal-Mart. The tenant said he was forced to access these services after the landlords had blocked the charging station located on the rental property.

The final portion of the tenant’s application related to costs associated with the purchase of items from Home Depot. He said these items were necessary to ensure adequate airflow in the unit. The tenant described a rental unit with very poor ventilation and air circulation. He said that these issues created poor air quality that forced him to devise an air pump system.

When asked about his understanding of the landlords’ responsibilities related to the car charging station and the ventilation, the tenant said the parties had an oral agreement which allowed him to charge his car. The tenant also claimed to have submitted a text message in support of this agreement; however, a review of the evidence produced no such message. In his application, the tenant wrote that the lack of ventilation resulted in a “Failure to provide a safe and liveable resident.”

The landlords disputed the entirety of the tenant’s application and asked for it to be dismissed. The landlords acknowledged “some issues” with ventilation in the rental unit; however, they argued a significant number of attempts were made to address the issue of ventilation. The landlords cited various vent holes and the installation of additional fans as evidence of their commitment to fix the airflow issue.

The landlords argued they had no responsibility related to costs incurred to the charging of the tenant’s car. They landlords described an ongoing oral negotiation with the tenant related to terms associated with a new tenancy agreement. The landlords said no agreement was ever reached and the tenant was therefore bound by the terms of the original tenancy. They said the current tenancy did not include the car charger but they said that its use had formed a part of their discussions with the tenant.

The landlords disputed all allegations from the tenant that they had subjected him to an “illegal eviction”. They explained that following discussions amongst themselves [the landlords] they had decided to incorporate the suite into the entirety of their home for their own personal use. They explained the space would be used as an art studio and summer office. The landlords clearly stated they had no intention for the property to be

occupied by family members, to be re-rented or to be subject to renovations. The landlords said landlord D.T. was nearing retirement age and wished to use the property more fully.

Analysis

I will begin by analyzing the portion of the tenant's application related to the landlord's Notice to End Tenancy and then turn my attention to the remainder of the claim.

A review of the tenant's application reveals he filed his application for dispute on September 30, 2019 and then served the landlords via Canada Post registered mail on October 6, 2019. These steps were taken prior to his move out on October 10, 2019.

Section 51(2) of the *Act* states, "Subject to subsection (3), the landlord, must pay the tenant, in addition to the amount payable under subsection (1), an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement if (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy OR the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice."

A review of the Notice to End Tenancy issued to the tenant shows a service date of September 15, 2019, meaning the effective date of the notice is November 30, 2019. I find that the tenant's application is therefore premature. The tenant application related to compensation under section 51(2) of the *Act* is dismissed with leave to reapply.

The remaining portion of the tenant's application relates to issues which occurred during or immediately following the tenancy and will therefor be considered below.

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 his entitlement to his claim for a monetary award.

Flux Electrical & NEMA 14-50 adapter – After having considered the testimony of the tenant and following a review of the evidence, I decline to award the tenant any amount related to the installation of a car charger at his new rental home. The respondent landlords are in no way responsible for the actions of the tenant following the conclusion of their tenancy. The tenant was under no obligation to purchase or install these items at his new property and it would inequitable to place this burden on the respondent landlords. For these reasons, I dismiss this portion of the tenant's application without leave to reapply.

Home Depot ventilation supplies – Both parties acknowledged airflow issues with the rental unit. The tenant argued he incurred an expense as a result of his efforts to rectify this issue, while the landlords argued they took reasonable steps to address the tenant's complaints. Section 32(1) states, "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." I find the landlords efforts to rectify the airflow issue to be reasonable. Little evidence was presented by the tenant that the rental unit in question fell afoul of section 32(1)(a) of the *Act* and I therefore decline to award compensation for costs associated with ventilation supplies. I dismiss this portion of the tenant's application without leave to reapply.

Car charging - The parties presented conflicting testimony regarding each other's understanding of the rights associated with an electric car charger. The tenant maintained the landlords had orally agreed to allow him to use the charger, while the landlords said these discussions had only been preliminary negotiations in their attempt to craft a new tenancy agreement. Little evidence was presented by either party in support of their respective positions. Rule of Procedure 6.6 states, "the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it

is more likely than not that the fact occurred as claimed…The onus to prove their case is on the person making the claim." While the tenant maintained a text message was included in evidence which supported his position, a review of the evidentiary package revealed no such text. I therefore find that in the absence of a tenancy agreement or other evidence indicating such an agreement, that, the tenant failed to meet the burden laid out in Rule 6.6 and pursuant to Policy Guideline #16 which states, " A 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." For these reasons, I dismiss this portion of the tenant's application without leave to reapply.

Conclusion

The tenant's application related to compensation pursuant to section 51 of the *Act* is dismissed with leave to reapply.

All remaining portion of the tenant's application are dismissed without leave to reapply.

As the tenant was unsuccessful in his application, he must bear the cost of his own filing fee.

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: November 18, 2019

Residential Tenancy Branch