



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR FFT MNDCT OLC**

Introduction

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

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to section 46;
- Authorization to recover the filing fees from the landlord pursuant to section 72;
- A monetary order for damages or compensation pursuant to section 67; and
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62.

The landlord attended the hearing and was assisted by a family friend, SH. The tenants attended the hearing and were represented by JP, the head tenant on the tenancy agreement. ("tenant"). As both parties were present, service of documents was confirmed. The landlord acknowledges receipt of the tenant's Application for Dispute Resolution and evidence; the tenant acknowledges receipt of the landlord's evidence with the exception of the landlord's bank statements. The landlord testified he did not send the bank statements to the tenant. As the bank statements were not exchanged, they will not be used as evidence in accordance with rule 3 of the Residential Tenancy Branch Rules of Procedure.

Preliminary Issue

At the commencement of the hearing, the tenant advised that she will be vacating the rental unit on January 2, 2020. The parties agreed to a Mutual Agreement to End Tenancy pursuant to section 63 of the *Act*.

The parties agreed that there will be a Mutual Agreement to End the Tenancy. This tenancy will end on January 2, 2020 at 6:00 p.m. by which time the tenants and any other occupants will have vacated the rental unit. To give effect to the settlement reached between the parties and as discussed at the hearing, I issue an Order of Possession in favour of the landlord.

Preliminary Issue

The application before me was filed by the tenant, who clarified she is seeking that past rent be reduced by an amount that is equivalent to a reduction in the value of a tenancy

agreement. The landlord did not file an application seeking a monetary order for past rent.

Rule 6.2 of the Residential Tenancy Rules of Procedure state that the hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. As the landlord has not yet filed his application seeking a monetary order for unpaid rent, only the tenant's application to have arrears of rent reduced will be considered in this decision. I have not turned my mind to the amount of arrears owed, only to whether the tenant has established proof that she is entitled to a reduction. The landlord is at liberty to file an application for compensation for unpaid rent pursuant to section 67 within the timelines established under the *Act*.

Issue(s) to be Decided

Is the tenant entitled to have her arrears in rent reduced?

Background and Evidence

At the commencement of the hearing, I advised the parties that I would refer to any of the documents they **specifically referred to in testimony** in this decision. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. There was a signed tenancy agreement with the tenant however neither party provided a copy for this hearing. The tenancy agreement was signed by the tenant, JP and the landlord. No other people were signatories to the tenancy agreement. The tenancy was originally for the upper suite of a home with an upper and lower suite and it began on October 1, 2017 as a one year fixed term, becoming month to month at the end of the fixed term. Rent in the amount of \$1,250 was payable on the first day of each month. The landlord collected a security deposit/pet deposit in the amount of \$625.00 which he continues to hold.

The occupants of the lower suite moved out and the tenant's extended family moved into the lower unit at the beginning of April, 2018. No new tenancy agreement was signed, but the parties agree that the rent would be increased to \$2,450.00 per month for the entire house. The landlord testified that the tenant paid the rent sporadically and provided a spreadsheet indicating the date of each rent payment and how much was owing for each month. The landlord testified that as of November 1, 2019, the tenant owes \$33,557.00 in arrears of rent calculated by reviewing his bank statements since the beginning of the tenancy.

The tenant provided the following testimony. She never received a receipt for the security deposit or the pet damage deposit. She is unable to verify the landlord's

spreadsheet of arrears in rent because she has been packing and believes her receipts are in a packed box.

The tenant testified that there was a sewer collapse on November 6, 2018, causing 4 inches of sewage to get into the house. The landlord came and tried to fix the plumbing himself but was unsuccessful. The landlord told the tenant that he couldn't immediately retain a plumber so the tenant got her own plumber on November 8th and repaired the sewer leak by the following day. The tenant testified she is not seeking reimbursement for the plumber however due to the sewer leak, her health suffered. She went to the hospital and was kept there for 4 days. She was off work from November 2018 to February 2019 and was unable to resume full time work until April 2019. She suffers from memory loss, she got demoted, she lost seniority at work and had to take time off work. During the sewer collapse, the landlord never offered to have the tenant and her family stay at a hotel at the landlord's insurer's cost.

The tenant testified that some time during the tenancy, the hot water tank broke. The tenant did not specify a date when this happened. She never filed an application for dispute resolution for emergency repairs, preferring to have the landlord take care of it without involving the Residential Tenancy Branch.

The tenant's witness, her co-tenant, KJ testified she had woken up to find 5 inches of water from a blown hot water tank. She called her neighbor, a plumber to look at it. The neighbor opined that the tank should have been replaced years ago. The witness's boyfriend went to the landlord to speak to him about the tank but the landlord would not speak with him. A plumber was called by the tenants. The witness testified the plumber went to the landlord to have him look at the tank and during the inspection, the landlord yelled at her, causing anxiety and stress for her. The water tank was eventually replaced by the landlord 7 days after it 'blew out'.

The witness testified that during the sewer flood in November 2018, the landlord was unwilling to get a certified plumber. All the tenants were crammed upstairs as the basement was unlivable for the 3 days it took to fix the issue. She got a headache from the biohazard. Her mother suffers from memory loss and sickness from the sewer flood and the lack of hot water when the water tank broke.

Analysis

Although the tenant filed an application seeking compensation for monetary loss or money owed pursuant to section 67, her actual application was for a reduction of arrears pursuant to section 65. The landlord did not raise any objection to the tenant redefining the nature of her application.

Section 65(1)(f) states:

Director's orders: breach of Act, regulations or tenancy agreement

65 (1) Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if the director finds that a landlord or tenant

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

From her application, the tenant claims the landlord is responsible for ***“illness due to landlord’s negligence. Loss of wages and compensation for when the hot water tank blew and it took [landlord] 7 days to get fixed.”***

In order to succeed in her application, the tenant must be able to prove that the landlord has not complied with the *Act*, the regulations or a tenancy agreement. Has the tenant provided sufficient evidence to satisfy me on a balance of probabilities that the landlord has failed to fulfill his obligations as a landlord and caused a situation whereby the tenant has any right to deduct any portion of past rent?

Section 32 of the *Act* 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.

The tenant’s evidence shows the sewer flood happened on November 6, 2018 and was completely fixed by November 9th at the latest. I do not find 3 days to fix such an emergency to be unresponsive or negligent by the landlord. While the incident was regrettable and unfortunate, I cannot find the landlord responsible for the flood or find the landlord negligent in allowing it to happen. If the landlord had known the sewer was about to break and failed to remediate it, then he could be considered in violation of section 32 of the *Act*; however, the evidence shows the landlord immediately tried to fix it himself and couldn’t do so. I have considered the fact that the tenants contacted the plumber who fixed the sewer right away, but I also considered that the tenant specified during the hearing she was not seeking reimbursement for this and didn’t file an application pursuant to section 33 to recover costs for emergency repairs. No invoices were provided for this event or were referred to during testimony.

Second, in order to succeed in her claim, the tenant must be able to show that her illness, the reason for seeking compensation, was caused by the landlord's violation of the *Act*, regulations or tenancy agreement. I find the tenant has not provided satisfactory proof of this. The tenant has not demonstrated the sewer flood or the hot water disruption directly led to her illnesses or to the lost work, demotion, loss of seniority or loss of memory. There is no clear and direct connection between what the tenant attributes to be the cause of her illnesses and subsequent problems at work to any violation of the *Act* or tenancy agreement by the landlord. While an expert medical opinion from a doctor or specialist attributing the health concerns to violations of the *Act* would have corroborated the tenant's claim, none was presented into evidence by the tenant. Once again, even if the tenant sustained any illnesses during the tenancy, she has not satisfied me that on a balance of probabilities, her illnesses were caused by a violation of the *Act*, regulations or tenancy agreement on behalf of the landlord.

The tenant has not provided a monetary order worksheet to allow me to determine the basis upon which I should allow a \$11,600.00 from her rental arrears. I wasn't advised if the sum is for lost wages, for ongoing medical costs, for damage or something else entirely. I find the tenant has not successfully proven the value of her loss, if it were to be awarded.

Lastly, as I don't know the basis for the \$11,600.00 sought, I cannot determine if the tenant mitigated her claim. I can only take notice that the tenant did not file an application for dispute resolution seeking the landlord comply with section 32 of the *Act* if the rental unit was not 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, suitable for occupation by a tenant.

I find the tenant has provided insufficient evidence to prove that the landlord violated the *Act*, regulations or tenancy agreement. The tenant's application for a reduction of rental arrears is dismissed without leave to reapply.

The tenant's application seeking an order that the landlord comply with the *Act*, regulations or tenancy agreement pursuant to section 62 is dismissed, as the tenancy will end by mutual agreement on January 2, 2020.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession. The parties agree that the tenant is to vacate the rental unit by 6:00 P.M. on January 2, 2020, and the landlord is to serve this Order of Possession immediately and enforce it as early as 6:01 P.M. on that day should the landlord choose to do so.

The landlord retains the right to file an application for seeking compensation for unpaid rent pursuant to section 67, within the timelines established under the *Act*.

This decision is **legal, final and binding** and 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: December 16, 2019

Residential Tenancy Branch