



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, PSF, RP, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for:

- a monetary claim of \$4,250.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement;
- an order to provide services or facilities required by the tenancy agreement or law;
- an order for regular repairs; and
- recovery the \$100.00 cost of their Application filing fee.

The Tenant, J.W., appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, J.W., who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

I explained the hearing process and gave the Tenant an opportunity to ask questions about the hearing process. During the hearing, the Tenant was given the opportunity to provide his evidence orally and to respond my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that he served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on November 5, 2019. The Tenant provided a Canada Post tracking number as evidence of service. I checked the tracking number on the Canada Post website and discovered that the Landlord had refused to accept the registered mail.

According to RTB Policy Guideline 12, "Where the Registered Mail is refused or deliberately not picked up receipt continues to be deemed to have occurred on the fifth day after mailing."

Accordingly, I find the Tenant served the Application, Notice of Hearing, and documentary evidence on the Landlord on November 10, 2019.

Preliminary and Procedural Matters

The Tenant provided his email address at the outset of the hearing and confirmed his understanding that the Decision would be emailed to the Tenants and mailed to the Landlord, and that any Orders would be sent to the appropriate Party in this manner.

The Tenants withdrew their claims for an order to provide services or facilities required by the tenancy agreement or law, and an order for regular repairs. The Tenant said they moved out of the rental unit on November 1, 2019. Accordingly, I have considered only their Application for compensation or damage or loss under the Act, regulation or tenancy agreement, and their request to recover the \$100.00 cost of their Application filing fee.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Tenant said that the fixed term tenancy began on August 1, 2019, and was to run for a year until July 31, 2020, with a monthly rent of \$800.00, due on the first day of each month. The Tenant said that he and his wife agreed to clean the rental unit in lieu of paying a \$400.00 security deposit; however, they did not apply for recovery of the security deposit.

The Tenant said that the Landlord refused to sign a written tenancy agreement, because he was going through a divorce and did not want to have a record of the rental income. The Tenant said the Parties agreed that the rent would be low, as compensation for the construction work that needed to be done on the rental unit. The Tenant said he moved out on November 1, 2019, because the Landlord was not holding up his end of the arrangement to supply materials promptly.

The Tenant said:

It was a horrible process for my family. [The Landlord] said he'd have a working toilet in three days. It took three weeks. It took six weeks to get a shower working. The stove wasn't hooked up properly, and I'm not ticketed to do electrical work. Running wires and putting in plugs is okay, as long as there was an electrician.

The whole thing should have been completed in less than 30 days, but it was frustratingly sub-standard circumstances. While waiting the three weeks for the working

toilet, we had to use a bathroom in his basement that was mouldy and disgusting. My wife has chronic IDS and she was made sick by using it, and she needed to use it a lot, given her condition. The Landlord said the toilet wasn't a high priority.

The Tenant submitted a monetary order worksheet ("MOW") in which he claimed \$4,250.00 for "construction work". In the hearing, he said he has been a contractor for fifteen years and that he charges \$50.00 per hour. The Tenant submitted an invoice for this work that he said he gave to the Landlord, dated October 29, 2019 ("Invoice"). The Invoice sets out the following:

	[Landlord's Name & Address]	Oct 29, 2019
1	Framing Min. Charge	500.00
2	Drywall Boarding	500.00
3	Drywall Tapping	1000.00
4	Electrical	250.00
5	Plumbing 40+ hrs	2000.00
	[Tenant's name & signature]	
		4250.00

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

In claims for compensation, pursuant to section 67 of the Act, the party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove on a balance of probabilities in establishing a monetary claim. In this case, the Tenant must prove:

1. That the Landlord violated the Act, regulation, or tenancy agreement;
2. That the violation caused the Tenant to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenant did what was reasonable to minimize the damage or loss.

The Tenant said that the Parties did not have any written agreements, not a tenancy agreement and not a work for rent agreement. The Tenant said he paid lower rent in lieu of doing work for the Landlord to improve the condition of the rental unit ("Verbal Agreement"). He did not specify any other terms of this Verbal Agreement, such as the Tenant being compensated for his work beyond the decreased rent.

The Tenant argued that the Landlord did not uphold his end of the Verbal Agreement by not providing materials in a timely manner.

The Tenant did not deny that he paid lower rent for the work he did. This is inconsistent with the Tenant's claim that the Landlord breached the Verbal Agreement. I find that the agreement was for lower rent for work on the rental unit. I find that the Tenant has applied for compensation for work he agreed to do in lieu of lower rent. The Tenant said that the rental unit conditions were uncomfortable for him and his family; however, he did not deny that he was aware of the condition of the rental unit before he and his family moved in.

The Tenant agreed to this arrangement without the benefit of putting the terms in writing. I find that the Tenant has not provided sufficient evidence that the Parties' Verbal Agreement contained terms that the Landlord breached. I find the Tenant has provided insufficient evidence to meet his burden of proof in this matter; therefore, I dismiss the Application in full without leave to reapply.

Conclusion

The Tenants are unsuccessful in their Application, as they provided insufficient evidence to support their burden of proof in this matter. The Application is dismissed wholly 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: December 31, 2019

Residential Tenancy Branch