



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT FFT MNDCT PSF RP RR

Introduction

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*; *and*
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

SW, advocate, appeared with the tenant. DJ appeared with the landlord, and represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

As the parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution ('application'). The landlord confirmed receipt of the tenant's application and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence. As the landlord's evidentiary materials were not served on the tenant in accordance with section 88 of the *Act*, the landlord's evidence was excluded for this hearing.

Issues

Is the tenant entitled to recover the filing fee for this application from the landlord?

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

Is the tenant entitled to a monetary compensation for money owed under the Act, regulation, or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Is the tenant entitled an order to allow access to or from the rental unit or site for the tenant or the tenant's guests?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on September 1, 2017. At the time of the hearing the tenant testified that monthly rent was set at \$936.00, payable on the first of the month, while the landlord testified that rent was set at \$922.50. The tenant provided a Notice of Rent increase issued to him on September 4, 2018 raising the rent from \$900.00 to \$936.00 as of January 1, 2019.

The tenant is seeking an order for the landlord to provide facilities as agreed upon in the tenancy agreement, specifically storage and use of the yard. The tenant is also requesting an order for the landlord to change the lock, or provide a key, to one of the entrances to the tenant's suite. The tenant made the following application for rent reductions and compensation related to the landlord's failure to provide access to the agreed upon facilities;

Item	Amount
15% of \$900.00 rent for 16 months	\$2,160.00

15% of \$936.00 rent for 11 months	1,544.40
5% of \$936.00 rent for 6 months	280.80
Compensation for December 2019/January 2020 Storage/use of yard	369.00
Filing Fee	100.00
Total Monetary Order Requested	\$4,454.20

The tenant submitted a copy of the tenancy agreement which states that storage and use of the yard were included in the monthly rent. The tenant testified that the storage area underneath the stairs have been locked since the beginning of the tenancy, despite the fact that the landlord indicated to him during the walk through that he would have access to this space.

The tenant testified that he is also unable to fully utilized the yard as the landlord has stored garbage and other materials there. The tenant testified that the landlord lives at a different address, and has use of a garage. The tenant argued that the storage space and yard are material terms of the tenancy agreement, and the landlord has failed to provide access to these areas. The tenant testified that he has no safe place to store items such as his propane tank, tools, or bicycle. The tenant provided photos of the spaces in his evidentiary materials. The tenant testified that the landlord had pulled out his plants, and put up structures preventing him from freely using this space.

The landlord does not dispute that storage space and use of the yard are included in the tenancy agreement, but this does not include use of the locked storage area, which the landlord testified was not built when the unit was advertised for rent. The landlord testified that this area was constructed at the end of September 2017 after the tenant had already moved in. The landlord testified that the tenant does have access to the yard as agreed upon, but that the tenant does not have exclusive use as the yard is shared with the other tenant and the landlord. The landlord testified that the tenant was provided with his own designated area in the yard, which is a large space. The landlord testified that the tenant has use of the indoor storage area located inside the tenant's unit, which was intended to be shared.

The tenant is also requesting that the landlord provide him with a key for the second entrance, which the tenant can only unlock from the inside. The landlord responded that they no longer have the key, and that the landlord has given permission to the tenant to change the lock for door if he wishes.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

In this matter the tenant bears the burden to prove that it is likely, on balance of probabilities, that facilities listed in the tenant's application were to be provided as part of the payable rent from which its value is to be reduced. I have reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows.

Section 27 Terminating or restricting services or facilities, states as follows,

27 (1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
- (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find that for the purposes of this matter pursuant to Section 27(2)(b) and 65 that use of storage and the yard are considered a qualifying **service or facility** stipulated in the **Definitions** of the *Act*.

I find the the tenancy agreement submitted does show that the tenant is provided use of storage and the yard as part of the monthly rent. I find that both parties provided conflicting testimony about whether the tenant had use of the storage space and yard indicated in the tenancy agreement. The landlord testified that the tenant was provided use of both of these facilities as agreed upon, and that the tenant was requesting use of a storage facility that was designated for landlord use only. The landlord also testified that the tenant does have use of the yard, but that the space was shared with other tenants and the landlord.

As stated above, the tenant applicant has the burden of proof in supporting his claim for a rent reduction and monetary compensation. In light of the evidence before me, I am satisfied that the landlord has provided the tenant with use of the yard and a storage area as indicated in the written tenancy agreement. Although the tenant references an oral agreement by the landlord to allow the tenant use of the locked storage space, I am

not satisfied that the tenant had provided sufficient evidence to support this. I find that the tenancy agreement simply says “storage” and “use of yard”, and did not specify a specific area or whether the tenant would have exclusive use of these facilities. I find that the landlord has not removed any facilities that are included in the tenant’s rent as stated in the written tenancy agreement. On this basis, I dismiss the tenant’s application for a rent reduction and monetary compensation without leave to reapply. I also dismiss the tenant’s application for access to the locked storage area.

RTB Policy Guideline 7 states the following about the changing of locks:

The Act¹ allows the tenant to request that the locks be changed at the beginning of a new tenancy. The landlord is responsible for re-keying or otherwise changing the locks so that the keys issued to previous tenants do not give access to the rental unit. The landlord is required to pay for any costs associated with changing the locks in this circumstance.

Although the entrance is a secondary one, the door referenced in this application is an exterior door, which may allow access for the landlord or previous tenant to enter the tenant’s rental unit. Although the landlord’s testimony is that they no longer have keys to this door, and that they give permission for the tenant to change the locks, I find that the responsibility falls on the landlord to pay for any costs associated with changing this lock. On this basis, I allow the tenant’s application for the landlord to re-key or change the lock for this door, and provide the tenant with a key to this door. I order that this be completed within a week of the receipt of this decision.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord to repair and maintain a rental property:

32 (1) *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 have considered the testimony of both parties, and I am not satisfied that the tenant has provided sufficient evidence to support that the landlord has failed to fulfill their

obligations as required by section 32 of the *Act* as stated above. On this basis, I dismiss this portion of the tenant's application without leave to reapply.

As the filing fee is normally awarded to the successful party after a hearing, and the tenant was only partially successful in his claim, I allow the tenant to recover half of the filing fee. The tenant may choose to give effect to this monetary award by reducing a future monthly rent payment by \$50.00.

Conclusion

I allow the tenant's application for the landlord to re-key or change the locks to the locked secondary entrance, and provide the tenant with a key. I order this be done within a week of the receipt of this decision.

I issue a monetary award in the tenant's favour in the amount of \$50.00. I allow the tenant to implement this monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$50.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remaining portions of the tenant's application 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: January 29, 2020

Residential Tenancy Branch