



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT MNDCT OLC PSF

Introduction

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

- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow access to or from the rental unit or site for the tenants or the tenant's guests pursuant to section 70
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlords to provide services or facilities required by law pursuant to section 65.

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 both parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlords duly served with the tenants' application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

At the outset of the hearing, both parties confirmed that the tenants have moved out. As this tenancy has come to an end, the tenants' application pertaining to the tenancy was cancelled with the exception of the tenants' monetary application.

Issues

Are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

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 July 1, 2018, and ended on December 15, 2019. Monthly rent was set at \$1,200.00, payable on the first of the month. The tenants' security deposit of \$600.00 was returned to them less deductions.

The tenants are seeking monetary compensation in the amount of \$2,800.00. The tenants are asking for a refund of rent in the amount of \$600.00 for the months of November 2019 through to January 2020, and an additional \$1,000.00 for the hostility they faced from the landlords.

The tenant RT testified in the hearing that the landlord DD had pushed him with his body, and that the tenants had moved out shortly after. The tenants testified that they incurred significant monetary losses as they had to move out quickly.

The landlords testified that the tenants did have access to the amenity room, but that this was a privilege that was revoked due to the tenants' behaviour. It was undisputed by both parties that the landlords had put up fencing for security reasons, and only 20 keys were made. The landlords testified that they were in the process of obtaining more keys for residents, but in the meanwhile the tenants had access the amenity room by reaching over a fence, which was against the rules of use. The landlords testified that following this incident, the tenants acted in a hostile manner, and as a result their privileges were revoked.

The landlord included the "amenity room agreement" in their evidentiary materials. The agreement reads in part:

"Access to the AR is NOT part of the resident's tenancy agreement and building owner can change or remove any equipment of the AR and change schedule at any time without compensation to the Resident"

"Breach or violation of these rules and regulations by a Resident or their guest(s) can result in immediate suspension of access to the AR".

The landlords also included a copy of the tenancy agreement, a letter from the former co-tenant RL, as well as a caution notice from the landlords dated November 21, 2019.

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 tenants bear the burden of establishing their claim on the balance of probabilities. The tenants 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 tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants 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 tenants bear the burden to prove that it is likely, on balance of probabilities, that facilities listed in the tenants' 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.

Although common areas and recreational facilities are considered a qualifying **service or facility** stipulated in the **Definitions** of the *Act*, I find that the use of the amenity room, although previously offered to the tenants, is not a material term of the tenancy agreement, nor is it an included service. I accept the landlords' testimony and evidence that the use of the facilities was conditional on the tenants' adherence to a set of rules and regulations, as set out in the amenity room agreement.

I find that the tenants' rights were revoked after the landlords had determined that the tenants had failed to comply with the rules and regulations. I have also considered the tenants' application for compensation for the way they were treated by the landlords. The landlords dispute the tenants' allegations, stating that the tenant RT was the aggressive party. In light of the conflicting testimony and evidence, I am not satisfied that the tenants have provided sufficient evidence to support that the landlords have contravened the *Act* or tenancy agreement, and that the tenants had suffered a loss as a result of this breach. For these reasons, and as the burden of proof is on the tenants to support their claim, I dismiss the tenants' entire application for monetary compensation without leave to reapply.

Conclusion

The tenants' entire application is 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: February 6, 2020

Residential Tenancy Branch