



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, PSF

Introduction

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

- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

While the tenants attended the hearing by way of conference call, the landlord did not. I waited until 1:51 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenants were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenants and I were the only ones who had called into this teleconference.

The tenants provided sworn, undisputed testimony that the landlord was served with the tenants' application for dispute resolution package on February 27, 2020 by way of registered mail. In accordance with section 89 of the *Act*, I find the landlord deemed served with the tenants' application on March 3, 2020, 5 days after mailing.

Preliminary Issue – Tenants' Evidentiary Materials

The tenants testified that they were unable to provide any evidentiary materials for this hearing due to the inability to attend the location where the materials are stored at. The

location where their evidentiary materials is currently inaccessible due to Covid-19 protocols. The tenants requested that the evidentiary materials that they had submitted for previous hearings be considered for this hearing.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, I find that it would be prejudicial to the landlord to admit evidence that was submitted for a previous hearing. The landlord was not in attendance at the hearing to confirm the receipt of such materials, or confirm whether they consented to admission of these materials. As the landlord has the right to know the case against him/her, I find it would be prejudicial to admit evidence that was submitted for a different hearing. Thus I exercise my discretion to dismiss the tenants' application to admit this evidence.

The tenants testified that they still wished to proceed with the scheduled hearing on the basis of their sworn, oral testimony. The landlord did not submit any written evidence for this hearing.

Issues(s) to be Decided

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

Are the tenants entitled to an order for the landlord to comply with the *Act*?

Are the tenants entitled to an order to the landlord to provide services or facilities required by law?

Background and Evidence

This month-to-month tenancy began on May 1, 2019, with monthly rent set at \$1,200.00. The tenants testified that rent is normally payable between the first and fourth day of the month. The landlord collected a security deposit in the amount of \$500.00, which the landlord still holds.

The tenants testified that they were reducing their monetary claim to \$150.00 from \$300.00. The tenants testified that this monetary claim is for the lost wages that ZH suffered due to her attendance at the previous arbitration hearings with the landlord. The tenants testified that both arbitration hearings were in the tenants' favour.

The tenants testified that despite the fact that the written tenancy agreement includes laundry facilities only the female tenant ZH was allowed access to do the laundry. The tenant JC testified that he is denied access because he is a male, despite the agreement that they be allowed to do laundry twice a week. JC testified that he required the facility to launder his clothing, and as ZH works 6 days a week, this restricted their ability to do laundry as needed.

The tenants also applied for access to their mail. The tenants testified that they share a mailbox with the landlord, who currently holds the key to the mailbox. As a result the tenants have to wait until the landlord provides them with their mail. The tenants testified that the landlord would withhold the mail for extended periods of time, and the tenants did not have access to their mail in a timely manner. The tenants requested a key to the mailbox as the landlord does not provide them with their mail in a timely manner, and is upset when the tenants request their mail.

Analysis

The tenants have applied for a monetary order of \$150.00 for ZH's loss of wages related to her attendance at previous arbitration hearings with this landlord.

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.

Based on the evidence and testimony before me, I am not satisfied that this monetary loss claimed stemmed directly from a violation of the tenancy agreement or contravention of the *Act*. The dismissal of a claim is not sufficient to support that the other party has contravened the *Act* or tenancy agreement. Accordingly, I dismiss the tenants' monetary claim without leave to reapply.

The tenant JC testified that he is denied access to the laundry facility even though it is a term of the tenancy agreement.

Section 27 of the *Act* states the following about a landlord's obligation to provide facilities as set out in a tenancy agreement:

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.

As neither party submitted a copy of the written tenancy agreement for this hearing, I am unable to verify the terms of the tenancy agreement. Accordingly, I am dismissing this portion of the tenants' application with leave to reapply.

The tenants provided sworn testimony that the landlord has failed to provide them with their mail in a timely manner. As I am unable to verify whether the landlord is able to provide the tenants with their own key, I dismiss the tenants' application for their own mailbox key with leave to reapply. I order that the landlord provide the tenants with their mail no later than 1 day after the mail is delivered to the mailbox. If the landlord is away, the landlord is obligated to either provide the tenants with a key to the mailbox in order to collect their mail, or make arrangements for an agent to collect and deliver the mail to the tenants on a daily basis.

Conclusion

I dismiss the tenants' monetary application without leave to reapply.

I order that the landlord provide the tenants with their mail no later than 1 day after the mail is delivered to the mailbox. If the landlord is away, the landlord is obligated to either provide the tenants with a key to the mailbox in order to collect their mail, or make arrangements for an agent to collect and deliver the mail to the tenants on a daily basis.

The tenants' application for access to the laundry facilities and for the mailbox key is dismissed with 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: March 30, 2020

Residential Tenancy Branch