



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNRL, MNDCL, FFL; CNR, CNC, MNRT, MNDCT, RP, RR

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and for compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), pursuant to section 46;
- cancellation of the landlord's One Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47;
- a monetary order for the cost of emergency repairs and for compensation under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to complete repairs to the rental unit, pursuant to section 33;
- an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The landlord, the landlord's agent and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agent confirmed that she had permission to represent the landlord named in these applications. This hearing lasted approximately 34 minutes.

This hearing began at 9:30 a.m. with all parties present. The landlord exited the conference and did not call back in, after I notified him that I could not hear him, I could only hear noise and static on his line. The landlord's agent claimed that the landlord was calling from Toronto. I continued the conference without the landlord, as his agent confirmed that she had permission to represent him. The hearing ended at 10:04 a.m.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application. Both parties confirmed that they were ready to proceed with this hearing.

At the outset of this hearing, both parties confirmed that the tenant was in the process of vacating the rental unit and would be out on the day of this hearing, November 10, 2020. The landlord's agent confirmed that the landlord did not require an order of possession against the tenant. The tenant confirmed that she was not pursuing her claims to cancel any notices to end tenancy or any repairs. I notified both parties that these portions of their applications were dismissed without leave to reapply.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to remove the tenant's minor son, who was named as an applicant tenant. I also remove the landlord's agent as a respondent landlord, as she is only the agent for the owner landlord. I do not find any prejudice to either party in making these amendments.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee for his application?

Is the tenant entitled to a monetary order for the cost of emergency repairs and for compensation under the *Act*, *Regulation* or tenancy agreement?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2019 and is ending on November 10, 2020. Monthly rent in the amount of \$1,950.00 is payable on the first day of each month. A security deposit of \$975.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties.

The landlord seeks a monetary order of \$4,875.00 for unpaid rent from September to November 2020, and to recover the \$100.00 application filing fee. Both parties agreed that rent of \$1,950.00 for each month was unpaid for September and October 2020 and \$975.00 for half a month was unpaid for November 2020. The tenant stated that although the above amounts and months were correct, she did not owe it to the landlord, because she was unable to work and fell on stairs at the rental unit because of the landlord's failure to repair them.

The tenant seeks a monetary order of \$21,800.00. In her application, the tenant claimed for \$5,000.00 for a damaged stove and to eat out everyday, \$5,000.00 for pain and suffering for being electrocuted and an ankle injury, \$5,000.00 for a loss of future wage loss, \$1,800.00 for a rent reduction for her ankle injury, and \$5,000.00 for no stove and for being electrocuted. The tenant did not go through all of her monetary claims during the hearing, she only went through the two parts mentioned below.

The tenant seeks \$5,000.00 for pain and suffering for a right ankle and foot injury when she fell after stairs caved in outside the rental property. She stated that the stairs were high, dangerous, rotted, and the wood split. She said that she had to take five months off work, but she paid rent until September 2020. She claimed that she thought she would get better, but it got more severe, she tore a ligament, a bone is sticking out and she may need surgery. She maintained that she sent her doctor's letters and photographs to the landlord, but the landlord's agent denied receiving any medical information from the tenant.

The landlord disputes the tenant's claim for \$5,000.00 for the ankle injury. The landlord's agent stated that on March 14, she called a handyman to fix the broken step and on April 20, she replaced all six stairs on the balcony because she did not want to take any future risks. She claimed that she only heard about the tenant's injury on September 1, when the landlord tried to evict the tenant, and that the tenant presented no medical evidence of her injury, including any doctor's reports or x-rays, only physiotherapy records.

The tenant seeks \$5,000.00 for pain and suffering for electrocuting both of her arms, from cleaning the stove at the rental unit. She said that the landlord called a repairman and replaced one stove burner that was not working. She claimed that she was numb for a couple of days, her heart hurt, and she got injections. She stated that the electrician told her it was a faulty stove, the landlord did not even replace the stove, she did not want something new but even used stove was okay. She maintained that she had to eat out everyday with her children and she could not teach them to cook at home.

The landlord disputes the tenant's claim for \$5,000.00 for electrocuting herself. The landlord's agent said that if the tenant's injuries were as serious as she claimed, the tenant would have called an ambulance and produced a report from the emergency hospital room, which the tenant did not. She stated that she called an electrician who replaced the one burner and who said there were no other problems with the stove and that the one burner could not cause electrocution to the tenant.

Analysis

Landlord's Application

Section 26 of the *Act* requires a tenant to pay monthly rent to the landlord on the date indicated in the tenancy agreement, which in this case, is on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply.

Both parties agreed that the tenant failed to pay rent of \$1,950.00 for each of September and October 2020 and \$975.00 for half of November 2020. Accordingly, I find that the landlord is entitled to rental arrears of \$4,875.00 from the tenant.

I find that the tenant was not entitled to a rent reduction, the landlord did not agree to a rent reduction, the tenant did not pay for emergency repairs as per section 33 of the *Act*, and the tenant did not have an order from an Arbitrator to reduce her rent.

The landlord continues to hold the tenants' security deposit of \$975.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$975.00, in partial satisfaction of the monetary award.

As the landlord was partially successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

Tenant's Application

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's entire monetary application of \$21,800.00 without leave to reapply.

I find that the tenant failed to provide documentary proof in the form of invoices, receipts, estimates, or quotes to support her monetary claims. The tenant also failed to provide case law for pain and suffering or other such documents to prove her claims for her right ankle/foot and the electrocution. She did not even indicate how she came up with the numbers that she did. The tenant only went through \$10,000.00 of the \$21,800.00 she was claiming for, during the hearing. The tenant did not go through any of her documents during the hearing, including any medical reports or physiotherapy records. She referenced providing the documents, but did not provide any details or dates, and she did not point me to any specific documents, provisions, pages or any other information.

Conclusion

I order the landlord to retain the tenant's entire security deposit of \$975.00, in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$4,000.00 against the tenant. Should the tenant 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 remainder of the landlord's application is dismissed without leave to reapply.

The tenant's 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: November 10, 2020

Residential Tenancy Branch