



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: RP OLC CNL MNDCT OPL FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for landlords’ own use pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenants.

The tenants requested:

- cancellation of the landlord’s 2 Month Notice to End Tenancy for landlord’s own use (the 2 Month Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- and an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

At the outset of the hearing, both parties confirmed that the tenancy had ended on November 6, 2020. The landlord confirmed that she no longer required an Order of Possession. As the tenancy has ended, both applications were cancelled with the exception of the tenants’ application for monetary compensation.

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

Issues 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?

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 15, 2020, and ended on November 6, 2020. Monthly rent was set at \$1,100.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$550.00, which the landlord still holds.

The tenants are seeking \$1,600.00 in compensation for the landlord's failure to comply with the *Act* and provided facilities and services as agreed upon. The tenants testified that despite their repeated requests, the landlord failed to address several outstanding issues during the tenancy, including insufficient internet service, lack of adequate hot water, refusal to properly address mould and water damage, and refusal to provide parking and laundry facilities as agreed upon. The tenants testified that although the landlord had offered to assist with the laundry, the landlord failed to do so in a timely manner. The tenants testified that the landlord did not properly address the issue with the mould, and instead of remediation, they simply re-tiled over the mould. The tenants testified that they had to use a laundromat service, and incur higher fees for data usage as a result of the landlord's failure to provide the agreed upon services. The tenants submitted the overages of their data usage in support of their claim.

The landlord disputes the tenants' entire monetary claim. The landlord testified that she had provided all the agreed upon services as required by the tenancy agreement. The landlord testified that the home was approximately 40 years old, and she had performed repairs as required by the *Act*. Furthermore, the landlord testified that she had never denied access to the tenants to laundry facilities, or the parking. The landlord testified

that the internet and hot water were working and sufficient, which the landlord testified was confirmed by the fact that she lived in the same home with her family.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter " 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."

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant 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 reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows.

As stated above, the tenant applicants have the burden of proof in supporting their claim for a rent reduction and monetary compensation. Although the expectations of the tenants have not been met for this tenancy, I find that the landlord has met their obligations under the *Act*, tenancy agreement, and as required by law. I find that the landlord had responded to the tenants' concerns about the mould issue by performing repairs, and although the tenants expressed concerns that the repairs did not sufficiently address the mould issue, I find that tenants' failed to meet the evidentiary burden to support that the repairs were inadequate, and as a result of this that they suffered a monetary loss in the amount claimed. I accept the landlord's evidence that the home was approximately 40 years old, and given the age and character of the rental unit, the landlord had responded to the tenants' requests by performing repairs as required.

I have also considered the other issues brought up by the tenants in this dispute. In light of the disputed testimony, I am not satisfied that the tenants had provided sufficient evidence to support that they were denied the services and facilities as agreed upon. I accept the landlord's testimony that she resided in the same home in a different suite, and accessed the same hot water and internet as the tenants. I am not satisfied that the tenants were denied the facilities listed in the tenancy agreement, and furthermore I am not satisfied that the tenants supported the value of the loss claimed in their application. Although the tenants submitted evidence to support the overages in data usage, I am not satisfied that this is sufficient to support that the level of internet service provided to them in the home were insufficient. There are a variety of explanations for why a user may exceed their data usage, and I am not satisfied that this overage was directly and solely due to the landlord's failure to provide services as agreed upon in the *Act* and

tenancy agreement. As stated above, the burden of proof is on the tenants to support their claim, and I find that the application falls short. Accordingly, the tenants' entire application is dismissed without leave to reapply.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

The remainder of the applications were cancelled as the tenancy had ended on November 6, 2020.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of the landlord's case, I find that the landlord are not entitled to recover the \$100.00 filing fee paid for this application. The landlord must bear the cost of this filing fee.

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 13, 2020

Residential Tenancy Branch