Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, who provided affirmed testimony. Neither the Landlord nor an agent for the Landlord attended. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Landlord nor an agent for the Landlord attended the hearing, I confirmed service of these documents as explained below.

The Tenant testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, and copies of their documentary evidence, were sent to the Landlord by mail on August 18, 2020, at the address for service for the Landlord listed on the tenancy agreement. The Tenant provided me with the expresspost tracking number, photographs of the mail package and its contents, and the Canada Post website confirms that the mail was sent as described above. The Tenant stated that the mail was returned to them and a photograph showing the returned envelope was submitted by the Tenant. Canada Post tracking information also confirms that the registered mail could not be delivered and was returned as set out above.

The Tenant stated that they are unsure if the registered mail was refused, if the Landlord is avoiding service, or if the Landlord did not record a proper address for service on the tenancy agreement but stated that this is the only address for service they have for the Landlord and it should therefore be considered valid service address as the tenancy ended only a few weeks prior to the registered mail being sent.

Section 88 and 89 of the Act allow for service by mail at the address at which the person resides, or if they are a landlord, the address at which they carry out business as a landlord. The address used by the Tenant for sending the mail is the address for service for the Landlord listed in the tenancy agreement in the documentary evidence before me, and the Tenant stated that no alternative address for service was ever provided to them during the one year tenancy. Further to this, I note that there was only a short passage of time (18 days) between the date the tenancy ended, July 31, 2020, and the date the mail was sent to the Landlord at the address for service listed in the tenancy agreement, August 18, 2020. Finally, I find that it is incumbent upon landlords to ensure that the addresses listed by them in their tenancy agreements are correct, and/or to provide their tenants with updated service addresses in a timely manner when required, as the provision of an address for service for the landlord is a requirement for tenancy agreements under section 13(2)(e) of the Act. Based on the above, I therefore find that the address for service for the Landlord listed in the tenancy agreement was a valid address for service for the Landlord under the Act at the time the mail was sent on August 18, 2020.

Section 90(a) of the Act states that unless earlier received, a document given or served by mail is deemed to be received on the 5th day after it is mailed. Policy Guideline 12 also states that where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision and that where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

I am satisfied that the xpresspost envelope sent to the Landlord by the Tenant on August 18, 2020, qualifies as Registered Mail in accordance with Policy Guideline 12 as it is a method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available. As a result, I find that the Landlord was deemed served with the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, the Notice of Hearing, and the documentary evidence before me from the Tenant, on August 23, 2020, five days after it was sent to the Landlord at an address that I have already found above qualifies as a valid address for service for the Landlord under the Act, in accordance with the Act, the Rules of Procedure and

Policy Guideline 12, despite the fact that this registered mail package was returned to the Tenant.

Based on the above and pursuant to rule 7.3 of the Rules of Procedure, the hearing therefore proceeded as scheduled despite the absence of the Landlord or an agent acting on their behalf.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

Issue(s) to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed term of the tenancy agreement commenced on August 1, 2019, and was set to end on July 31, 2020. The tenancy agreement states that rent in the amount of $3,700.00 is due on the first day of each month and lists the Applicant and two other persons, D.S. and V.P., as tenants of the rental unit.

The Tenant stated that the tenancy agreement in the documentary evidence before me accurately reflects the terms of the tenancy agreement and that the tenancy ended on July 31, 2020, as set out in the tenancy agreement, after which time new tenants, and not the Landlord, moved into the rental unit.

The Tenant states that they are seeking $2,600.00 in compensation for loss of use and loss of quiet enjoyment due to a flood which occurred in their room on September 7, 2019, the repairs for which were not fully completed until January of 2020. The Tenant stated that the flood was the result of a leak on the floor of the building above the rental unit, and that water seeped into the carpeting and drywall of their room as a result. The Tenant stated that despite repeated attempts to have the issue deal with expediently, repairs took 4 months, during which time they had either no use or very limited use of

their bedroom, as carpeting, drywall, and the primary heat source were removed, and large fans were installed to facilitate drying.

The Tenant stated that the fans ran constantly for several weeks straight and that after they were removed, they still did not have proper access to and use of their room as there was no flooring, no heat, missing drywall, and mold or fungus growing on the floor. The Tenant stated that they and their roommates suffered a significant loss of use and loss of quiet enjoyment as a result, due to noise and the requirement for the Tenant to sleep either in one of their roommates' bedrooms or the living room as the Landlord refused to provide the Tenant with alternate accommodation during the repairs. The Tenant stated that access to a washroom was also impacted.

The Tenant stated that despite repeated attempts to resolve the issue of loss of use and loss of quiet enjoyment with the Landlord and their agent by phone, text, email and in person, no resolution was reached, and no compensation was provided by the Landlord. The Tenant stated that they therefore had no choice but to file this Application seeking compensation, which they calculated as $650.00 per month for the four month period during which their use and quiet enjoyment of the rental unit was most impacted. The Tenant argued that given the length of the issues and the significance of the loss of an entire bedroom and limited access to a bathroom, the $650.00 sought per month over the four month period was a reasonable amount, as it represents 50% of their portion of the rent and approximately 17.5% of the total rent payable for the entire rental unit each month. The Tenant stated that they did not seek a higher amount as they still had use of the rest of the rental unit.

In support of their Application the Tenant submitted copies of email and text communications between themselves and the Landlord's agent, the Landlord and the strata corporation for the building in which the rental unit is located, a video and photographs showing the extent of the damage/loss/disturbance, and a copy of the tenancy agreement.

No one appeared on behalf of the Landlord to provide any documentary evidence or testimony for my consideration, despite my finding earlier in this decision that the Landlord was deemed served with a copy of the Application, the Notice of Hearing, and the documentary evidence before me from the Tenant on August 23, 2020, as required.

Analysis

Section 32(1) of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to freedom from unreasonable disturbance and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*. Further to the above, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results and that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the uncontested documentary evidence and affirmed testimony before me from the Tenant, I am satisfied that the Landlord breached section 32 of the Act by failing to have the necessary repairs to the rental unit completed in an timely and efficient manner and that the Tenant suffered a significant loss of use and loss of quiet enjoyment both as a result of the lack of expediency and as a result of the repairs, or lack therefore, in general. Given the severity of the loss of use and loss of quiet enjoyment suffered by the Tenant and their roommates, and the significant length of time involved, I am satisfied that the amount sought by the Tenant, $650.00 is reasonable. I am also satisfied that the Tenant acted reasonably to mitigate this loss by repeatedly requesting that the repairs be completed and by attempting on numerous occasions to reach a mutual agreement with the Landlord about the amount of compensation owed to them for the loss suffered and/or the provision of alternate accommodation for them by the Landlord.

Based on the above, I am satisfied that the Tenant has met the requirements of the four part test set out in section C of Policy Guideline 16 for claims for compensation and pursuant to section 7 of the Act, I therefore find that they are entitled to the $2,600.00 sought for damage or loss. As the Tenant was successful in their claims, I also award them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act.

Pursuant to section 67 of the Act, I therefore grant the Tenant a Monetary Order in the amount of $2,700.00 and I order the Landlord to pay this amount to the Tenant.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **$2,700.00**. The Tenant is provided with this Order in the above terms 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 Landlord is cautioned that costs of such enforcement are recoverable from them by the Tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 27, 2020

Residential Tenancy Branch