



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR-MT, LRE, MNRT

Introduction

The tenant seeks compensation under section 33 of the *Residential Tenancy Act* ("Act"), namely, that the landlord compensates the tenant for emergency repairs. In addition, the tenant had originally sought orders under section 46 (cancelling a 10 Day Notice to End Tenancy for Unpaid Rent) and section 70 (restricting a landlord's access to a rental unit). However, the tenant vacated the rental unit on October 31, 2020 and as such those two forms of relief are now moot. (For the record, those two claims will be dismissed without leave to reapply.)

The tenant filed an application for dispute resolution on October 1, 2020 and a hearing was held on December 7, 2020. The tenant and her advocate (also a witness) attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses; the landlord attend.

The tenant testified that she served the landlord with the Notice of Dispute Resolution Proceeding package by Canada Post registered mail on October 1, 2020. In addition, she testified that she sent her package of documentary evidence to the landlord on or about November 22, 2020. Based on this undisputed evidence I find that the landlord was served in compliance with the Act and the *Rules of Procedure*.

Issues

Is the tenant entitled to compensation under section 33 of the Act?

Background and Evidence

I only review and consider oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which is relevant to determining the issues. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy in this dispute began on March 1, 2020 and ended (by way of a settlement agreement) on October 31, 2020. The tenant testified that there were three floods during her tenancy that resulted in lots of cleanup, stress, and so forth.

The tenant's application was made under sections 33 and 67 of the Act, which I shall address below. Submitted with her application was a Monetary Order Worksheet which set out a claim for \$3,597.00, comprised of (1) \$1,500.00 for damages and loss resulting from the flood, (2) \$1,000.00 for the administration of three Residential Tenancy Branch disputes, (3) pain and suffering and severe physical and emotional distress and harassment of \$1,000.00, (4) \$375.00 for the return of her security deposit, and (5) \$472.50 for storage locker fees.

The tenant submitted a Word document which contained links to estimated costs of flooded basement cleanup costs. The estimates were general estimates and did not pertain to the rental unit in question. No invoices or receipts for actual cleanup were submitted into evidence. Additional evidence submitted by the tenant included email communications between the parties and several photographs of the rental unit, among other items.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The tenant's application was made under sections 33 and 67 of the Act.

The compensation section of 33 reads as follows:

- (5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant
 - (a) claims reimbursement for those amounts from the landlord, and
 - (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.
- (6) Subsection (5) does not apply to amounts claimed by a tenant for repairs

about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
 - (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
 - (c) the amounts represent more than a reasonable cost for the repairs;
 - (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

In this dispute, there is no documentary evidence of any amount that the tenant actually paid for emergency repairs. There are general references to estimated costs of flood cleanup, but no actual estimates for what the tenant may or may not have paid. Nor is there any documentary evidence of the tenant claiming reimbursement from the landlord for amounts spent.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving their claim for \$1,500.00 for flood clean up emergency repairs. While the landlord may very well have not done much in regard to the flooding issues, the fact is that there is no documentary evidence that the tenant incurred costs for emergency repairs. It is *solely* the cost for emergency repairs which may be claimed and recouped under section 33 of the Act. Having found that there is insufficient evidence for this claim, I dismiss the tenant's claim without leave to reapply.

Regarding the tenant's claims for administration of disputes, as I explained during the hearing, those types of costs cannot be awarded under the Act. That aspect of her application is dismissed without leave to reapply.

Regarding the tenant's claim for pain and suffering, etc., that claim cannot be made under section 33 of the Act, which is the section of the Act under which the tenant filed her application.

Regarding the tenant's claim for the damage deposit, that claim must be made under section 38 of the Act and cannot be considered under section 33 of the Act.

Regarding the tenant's claim for storage fees, this as well is unrelated to compensation sought for emergency repairs, and thus cannot be considered in this application.

For these reasons – that is, compensation claimed for the above three items – I dismiss those three claims with leave to reapply. The tenant, should she choose to make an application for any of the above-noted three items must ensure that such claims are made under the correct sections of the Act. (To clarify, the pain and suffering and the storage fees claims would be brought under section 67 of the Act, along with any claim for loss of personal property, whereas the claim for the return of a security deposit must be brought under sections 38 and 67 of the Act.)

Conclusion

I dismiss the tenant's application, with and without leave to reapply, as noted above.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: December 7, 2020

Residential Tenancy Branch