Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, RP, RR

Introduction

The tenants sought various relief under sections 49, 62, 65, and, 32 and 62 of the *Residential Tenancy Act* ("Act").

The tenants filed an application for dispute resolution on October 9, 2020 and a hearing was held on December 22, 2020. The tenant (R.P.) and the landlords attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

Preliminary Issue: Tenancy Has Ended

The tenant testified that he and the co-tenant vacated the rental unit a short while ago. As such, the claims for orders and relief under sections 49, 32, and 62of the Act (that is, an application for an order cancelling a notice to end tenancy, an order that the landlords comply with the Act, and an order for regular repairs) are now rendered moot. Therefore, those matters are dismissed without leave to reapply.

Issues

Are the tenants entitled to compensation by way of a retroactive reduction in rent for repairs, services, or facilities agreed to but not provided, pursuant to section 65 of the Act?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issue in the application. Only relevant evidence needed to explain my decision is reproduced below.

By way of background, the tenancy in this dispute began on July 23, 2017 and ended a few weeks ago, in late 2020.

The tenant began his testimony by providing extensive background regarding character and integrity issues between the parties, and he spent considerable time going over the landlords' submissions before turning to the matters for which the tenants seek compensation.

The tenant spoke of issues with a stove installation, self-cleaning oven issues, inoperable refrigerator issues, window screen issues (the landlords would not permit screens to be installed), smoke alarms that the landlords never inspected or checked, no routine maintenance of the property, dryer vents that were never cleaned, a yard that was not maintained, and, external lighting that the landlords allegedly never installed but in the tenant's opinion ought to have.

Submitted into evidence by the tenants were various photographs of the refrigerator, the garage, and the exterior of the property. Also submitted where various communications between the parties.

Not submitted into evidence was a Monetary Order Worksheet, though the tenants are claiming $3,500.00. I asked the tenant how he had arrived at or calculated this amount, and he said that it was a subjective estimation of compensation at a rate of $100 per month over the term of the tenancy. No further explanation or argument as to how this amount was determined was provided.

The landlords testified that they had a "fairly decent relationship" for the most part, and that they dealt with issued brought to their attention. They attended to the property at least once a year to inspect it. They testified that the yard to which the tenant referred is a common area (that is, under the control of strata) and that they have no authority in respect of installing exterior lighting (again, under the strata's responsibility).

The landlord argued that $100 a month as a basis for the tenants' claim is "ridiculous," and they noted that the issues with the refrigerator happened "in the middle of this."

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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

> 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.
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> . . .
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> 67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

First, while several references were made in the tenant's testimony and the 19-page written submission ("RTB Narrative") to various issues during the tenancy, there is, for the most part, an absence of any documentary evidence concerning communication between the parties. That is, an absence of email communication or otherwise of the tenants contacting the landlords about the various issues.

This was not the case with the refrigerator. There is a rather large amount of email back-and-forth between the parties concerning the refrigerator. That having been said, I do not find that the landlords breached the Act by not dealing with the situation. It appears that, based on the tenants' evidence, that they took care of the refrigerator well before the landlords were made aware of the problem.

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 tenants have not met the onus of proving that the landlords breached the Act, the regulations, or the tenancy agreement, that would lead to damages being awarded.

However, even if the tenants had proven a breach of the Act, the regulations, or the tenancy agreement – and I do not find that they did – the tenants failed to articulate a rationale or satisfactory explanation as to how $3,500.00 was calculated. In other words, they have not proven the amount or value of their loss. Certainly, I appreciate that establishing what is often a rather subjective dollar amount is no mean feat, but there must be some basis in fact on which the amount is calculated. Simply picking a dollar amount of, say, $100.00 per month for each month of the tenancy, is insufficient.

Regardless, I need not consider the remaining two criteria aspects of the four criteria listed above, as I find that the tenants have not proven either that the landlords breached the Act or proven the dollar amount of an alleged loss. For these reasons, I dismiss the tenants' application without leave to reapply.

Conclusion

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

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

Dated: December 23, 2020

Residential Tenancy Branch