



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

The tenant has applied for compensation pursuant to sections 51(2) and 67 of the *Residential Tenancy Act* ("Act"). In addition, they have applied for recovery of the application filing fee pursuant to section 72 of the Act.

Both parties, along with landlord's counsel, attended the hearing on January 12, 2021, which was held by teleconference. No issues of service were raised by the parties.

Issues

1. Is the tenant entitled to any or all of the compensation claimed?
2. Is the tenant entitled to recovery of the filing fee?

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 issues in the application. Only relevant evidence needed to explain my decision is reproduced below. Therefore, I will not be reproducing evidence concerning the landlord's alleged banging on the side of the property or about the slugs.

The tenancy in this dispute began on March 28, 2009 and ended on July 31, 2019. Monthly rent was \$1,200.00, due on the middle day of the month, and the tenant paid a security deposit of \$425.00.

The tenant's claims are as follows (as described in the tenant's application):

1. Compensation for inconvenience, stress and full access to master bedroom due to water leak, served her a request to repair. After repairs she served a notice to end tenancy.

2. Compensation for landlord ending tenancy for her use of property, said her mother was moving in. She renovated inside and outside of unit. She put ad on craigslist to rent it to the public in Nov.2019. New tenants moved in Dec,2019. Me and my son had to leave our community. I had to borrow money for moving expenses.

The tenant seeks \$1,400.00 as compensation for the first claim noted above, and they seek \$14,400.00 as compensation for the second claim noted above.

The tenant testified that due to a water leak that the landlord purportedly did not do much about, the tenant and their son lost the use of part of the bedroom. One quarter of the room, to be exact. Various correspondence between the parties regarding the leak was submitted into evidence.

The tenant was served a two month notice to end tenancy on May 30, 2019 and the tenant vacated the property, in compliance with that notice, on July 31, 2010. The notice, a copy of which was in evidence, indicated that the tenancy was ending so that the landlord or a close family member of the landlord could occupy the rental unit.

The tenant claims that new tenants occupied the rental unit and submitted two photographs of the interior of the rental unit (taken from outside) in August 2019. They also submitted three additional photographs taken of the exterior of the property at various dates. Also tendered into evidence was a photograph of a third party's mail, which the tenant argues is proof of a new tenant. I note that the photograph was taken on March 6, 2020.

The landlord testified that the rental unit is in an older house of 26 years of age. They testified that, yes, there was a leak problem, but that they took care of it every time it happened, and had it fixed. They denied the tenant's claim that they failed to attend to the problem. "Sure, the leak was bothersome . . . for both of us," the landlord added.

In respect to the tenant's second claim, the landlord's counsel submitted that the notice to end tenancy was given so that the landlord's mother could move into the rental unit. A copy of the mother's BC Housing proof of address, dated July 31, 2019, was tendered into evidence. The landlord's mother resided in the rental unit until March 2020, after which a new tenant moved into the rental unit on April 1, 2020.

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.

1. Claim for \$1,400.00 related to water leak

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Section 32(1) of the Act states that

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.

There was, I find, a water leak. A rather persistent leak that required multiple visits by the plumber. However, on the evidence before me, I find that the landlord discharged her duties as a landlord under the Act in attempting to resolve that leak. And, while I have no doubt that the leak caused some inconvenience to the tenant and their son, there is no evidence before me to find that the landlord failed to provide and maintain the rental unit in a state of repair that made it unsuitable for occupation by the tenant. Had the landlord sat idly by, letting the water flow, then there would likely be a basis for a claim that the landlord breached section 32(1) of the Act. But, I am not persuaded by the tenant's argument and evidence that this is the case in this dispute.

As such, 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 compensation related to the water leak. Accordingly, that aspect of the tenant's claim is dismissed without leave to reapply.

2. Claim for \$14,400.00 pursuant to section 51 of the Act

This aspect of the tenant's claim is made under section 51(2) of the Act, which states:

- (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if
 - (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The tenant claims that, instead of the landlord's mother moving into the rental unit, that someone else (other than the landlord or her immediate family) occupied the rental unit. The tenant referred to text and phone conversations purportedly had between the tenant's friend and the landlord. Also included into evidence were Craigslist ads. However, none of the ads or written communication reference the specific address of the rental unit. The landlord testified that they had other rental properties for which they were seeking tenants. The tenant tendered into evidence two photographs taken from the exterior of the rental unit into the interior of the rental unit. They further argued that this is proof that the landlord's mother was not living there. Finally, the tenant submitted photographs taken of the exterior of the property from some distance, including one taken at night with the rental unit's lights on.

The landlord submitted proof of the mother's address, which matches the address of the rental unit, and testified that their mother lived in the rental unit from sometime in August 2019 until March 2020. New tenants did not occupy the rental unit until April 2020.

I am not persuaded by the tenant's argument or evidence that the landlord did not take steps within a reasonable period to accomplish the stated purpose for ending the tenancy (that is, so that the landlord's mother could move in), nor that the rental unit was not used for the stated purpose for at least six months' duration. Two photographs of an empty kitchen do not prove that the rental unit is, or was, not occupied by the mother.

Photographs of the exterior of the rental unit also do not prove that the mother did not reside there. A single piece of mail from March 2020 also does not provide sufficient evidence that someone other than the landlord's mother resided in the rental unit.

Thus, 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 compensation under section 51(2) of the Act. That aspect of the tenant's claim is therefore dismissed, without leave to reapply.

3. Claim for Recovery of Application Filing Fee

As the tenant was unsuccessful in their application, I decline to grant recovery of the filing fee under section 72 of the Act.

Conclusion

I dismiss the tenant's application, 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 Act.

Dated: January 12, 2021

Residential Tenancy Branch