



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, OT, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order for regular repairs, pursuant to section 32;
- an Order for an issue not listed in the dispute resolution application; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:26 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. Tenant J.M. (the "tenant") and his spouse A.M. attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant, the tenant's spouse and I were the only ones who had called into this teleconference.

The tenant testified that the landlord was served with this application for dispute resolution via registered mail on December 3, 2020. A registered mail receipt stating same was entered into evidence. The Canada Post website states that the package was delivered to the landlord's mailbox on December 9, 2020. I find that the landlord was served in accordance with section 89 of the *Act*.

The tenant testified that since filing for dispute resolution the landlord has served them with a One Month Notice to End Tenancy for Cause (the "Notice"). The tenant testified that while they do not agree with the reasons to end the tenancy set out in the Notice, they have decided not to dispute the Notice and this tenancy will end in accordance with it. The

tenant testified that he therefore withdrew his application for regular repairs which regarded a non-functional rangehood. Pursuant to the above, I dismiss the tenant's claims for regular repairs, with leave to reapply.

Issues to be Decided

1. Are the tenants entitled to an Order for an issue not listed in the dispute resolution application?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant and his spouse, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant provided the following undisputed testimony. This tenancy began on July 1, 2019 and is currently ongoing. Monthly rent in the amount of \$2,100.00 is payable on the first day of each month. A security deposit of \$1,050.00.00 was paid by the tenant to the landlord.

The tenant testified that the stove of the subject rental property did not work properly at the start of the tenancy and the landlord promised to replace it but never did so. The submissions of the tenant state the following:

- one of the burners on the stove only turned on to the maximum level and could not be turned down;
- this caused food in a pot on the defective burner to burn;
- in the rush to deal with the burning food, the pot touched the arborite countertop resulting in a few heat blisters and discolouration near the sink.

The tenant testified that the landlord informed the tenant that he is planning on purchasing a \$3,000.00 to \$5,000.00 sink, which is wider than the current sink, which will then cover the area of the countertop which suffered the burn. The tenant testified that the arborite countertop is around 30 years old. The tenant testified that the landlord

wants to retain their security deposit to cover part of this cost and for the tenant to either pay the overage or to increase the tenant's rent to make up the difference.

The tenant testified that he is seeking an Order as to what would be a reasonable conclusion for the damage to the countertop. The tenant testified that he believes the landlord should pay for the damage because it occurred as a direct result of the malfunctioning stove the landlord refused to replace. The tenant testified that he wants an Order that the landlord not be permitted to retain his security deposit.

Analysis

I find that I am not able to provide the tenants with the relief sought as the tenants' application for dispute resolution is pre-emptive in nature and not properly before me. I find that the tenants are seeking order relating to a monetary claim against them from the landlord that has not yet been made. While I am not able to make any findings on the issues the tenant testified to, I will set out the law that may be relevant to this potential dispute, for the information of both parties.

The following sections regarding retention of the security deposit may be relevant (the below sections are non-exhaustive):

Condition inspection: start of tenancy or new pet

- 23** (1)The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (2)The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
- (a)the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b)a previous inspection was not completed under subsection (1).
- (3)The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4)The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (3), and
- (b) the tenant does not participate on either occasion.

Consequences for tenant and landlord if report requirements not met

24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord has complied with section 23 (3) *[2 opportunities for inspection]*, and
- (b) the tenant has not participated on either occasion.

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) *[2 opportunities for inspection]*,
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Condition inspection: end of tenancy

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

- (a) on or after the day the tenant ceases to occupy the rental unit, or
- (b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
- (b) the tenant has abandoned the rental unit.

Consequences for tenant and landlord if report requirements not met

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
- (b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24

(2) *[landlord failure to meet start of tenancy condition report requirements]* or 36

(2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must repay a deposit

- (a) in the same way as a document may be served under section 88 (c),
- (d) or (f) [*service of documents*],
- (b) by giving the deposit personally to the tenant, or
- (c) by using any form of electronic
 - (i) payment to the tenant, or
 - (ii) transfer of funds to the tenant.

The following sections of the *Act* and Residential Policy Guideline #40, on the recovery of damages may be relevant (the below sections are non-exhaustive):

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.

Director's orders: compensation for damage or loss

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.

Residential Tenancy Policy Guideline #40 states, in part:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due

to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Residential Tenancy Policy Guideline #40 states that counters have a useful life of 25 years.

The following sections of the *Act* regarding rent increases may be relevant (the below sections are non-exhaustive):

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

As the tenants were not successful in their application for dispute resolution, I find that they are not entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*.

Conclusion

The remainder of the tenant's application is dismissed 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 *Residential Tenancy Act*.

Dated: February 16, 2021

Residential Tenancy Branch