Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP RR LRE OLC MNDCT

Introduction

The tenant applied for a multitude of relief under the *Residential Tenancy Act* ("Act"), though this application will only address two matters, because the tenancy has ended.

Both parties attended the hearing on March 8, 2021, which was held by teleconference.

No issues of service were raised by the parties, though the landlords remarked that the tenant's evidence was "a mess of photos" and that they were unclear as to what some of the tenant's claims were about.

Preliminary Issue: Tenancy is Ended

The tenancy in this dispute ended prior to this hearing. As such, the tenant's claims for an order of landlord compliance (section 62 of the Act), an order restricting access (section 70), and an order for repairs (sections 32 and 62), have all been rendered moot. Those claims made in the tenant's application are accordingly dismissed without leave to reapply. Only the remaining claims for a reduction in rent (section 65 of the Act) and for compensation under section 67 of the Act, are considered.

Issue

Is the tenant is entitled to compensation, including a reduction of rent?

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.

The tenancy began on August 8, 2020 between the tenant and the then-new landlords. The landlords purchased the residential property and the tenant had been living in the rental unit for three years before the purchase. Monthly rent was $1,100.00 and the tenant paid a security deposit of $550.00, which was returned.

The tenant seeks the following compensation: (1) $179.69 for loss of food; (2) $275.00 which is equivalent to one quarter of the rent for October 2020 (this is the rent reduction sought); and, (2) $17.00 plus tax for repair costs to a window.

In respect of the first aspect of his claim the tenant testified that he went on a trip to Ontario and upon returning found the rental unit to be “in a state of disarray.” The landlords were doing renovations, including some to the rental unit, and there was “unfinished work.” By halfway through October the work was almost done. He also testified that power, heat, and water outages occurred that month. He said that this occurred on multiple occasions. He also stated that he lost outside light sources; a bulb had been removed from a motion sensor unit. Finally, he noted that the landlords’ contractor (who was building a deck) had left bags of nails laying around, which the tenant argued posed a risk.

In respect of the second aspect of his claim the tenant testified that while he was on his trip, one of the landlord’s electricians accidentally switch a breaker that lead to the power being cut off to the tenant’s fridge and freezer. As a result, he lost a good portion of this food, with the exception of some condiments. The landlords offered him $100 as compensation for the lost food, and later increased this offer to $150, which the tenant accepted. The tenant submitted receipts for the cost to replace the lost food but did not provide any receipts or other documentation for the original food that was in the fridge and freezer.

In respect of the third aspect of the claim the tenant testified that one of the windows in the rental unit was “visibly cracked” and could not close properly. (The landlord testified that it closed just fine.) The window caused the area near it to be quite drafty and there was little to no heat retention. He also added that the landlords did some power washing outside the house and some water got through the window and onto the tenant’s bed. The bed was situated below the window. He went to Canadian Tire and purchased a sealant tape which he then attached to the window to seal in the air.

The landlords also provided testimony regarding these issues. However, based on the tenant’s evidence that will be addressed below, I will not reproduce the landlords’ evidence or testimony further, except where noted in the analysis section below.

Analysis

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

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.

I will first address the tenant's claim for compensation related to the loss of food. The loss of food resulted from the landlords' contractor negligently switching off an incorrect breaker, which lead to a loss of electricity to the tenant's refrigerator-freezer. Not surprisingly, this led to a loss of much of the tenant's food.

The loss of the tenant's food was a result of a third party's negligence, not that of the landlords.' Thus, it does not follow that the landlords in someway breached the Act or the tenancy agreement that might give rise to compensable damages. Indeed, if there is any claim to be made by the tenant in respect of the loss of personal property (that is, the food) it ought to be against the contractor.

However, even if I had found the landlords in breach of the Act or the tenancy agreement – which I do not – the tenant has failed to establish the value or dollar amount of the food that was spoiled. Receipts submitted for groceries purchased after the food spoilage do not establish the value of groceries that were in the appliance at the time the contractor flipped the breaker. In the absence of such evidence the tenant has not established the value of the loss and such a claim cannot be considered.

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 has not met the onus of proving their claim for compensation related to food loss.

In respect of the tenant's claim for compensation related to the cost of "repairing" the window, again, in the absence of any documentary evidence (such as a receipt from Canadian Tire), I cannot award compensation for an unproven amount. And, while a nominal award may be considered, I am not persuaded that the landlords breached the Act such that the tenant is now entitled to compensation, including a nominal amount.

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.

The parties did not dispute that the windows in the rental unit are from 1918. They are over a hundred years old. Such windows are, and this was supported by the tenant's testimony, not particularly conducive to heat retention. However, these are the windows that were in the rental unit when the tenant first took occupancy many years ago. Having regard to the age and character of the house in which the rental unit was located, I find that the landlords provided and maintained the residential property in a suitable state of decoration and repair. Moreover, the tenant has not proven that the drafty window did not comply with health, safety or housing standards required by law.

Taking into consideration all of the tenant's 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 that the landlords breached the Act. As such, I do not award nominal damages.

Finally, in respect of the tenant's claim for one quarter of October's rent, while the tenant testified that the rental unit was "in disarray," that there were bags of nails laying about, that there was a missing lightbulb, and that the power, heat, and water was out on some instances, he has not persuaded me that the landlords breached section 32(1) of the Act. A rental unit that is temporarily in disarray does not – and the tenant did not argue this – mean that it is not suitable for occupation. The tenant was aware of the bags of nails, but he offered no evidence of suffering injury from said bags of nails. Moreover, the tenant offered no evidence of injury from a missing lightbulb outside of the rental unit. If there was a missing lightbulb, it does not rise to compensation in the amount of one quarter of the rent (all things considered). And it must not be ignored that the landlords in fact compensated the tenant for the disruption of renovations in the amount of $550.00. This is a generous and not insignificant amount.

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 that the landlords breached the Act or the tenancy agreement. If they had – and, again, I do not find that they did – the tenant has failed to show why he is entitled to $275.00 in compensation.

As for the claims of power, water, and electrical outages, there is scant evidence of these outages and by all accounts such outages would have been of such a temporary nature that it would be unreasonable to consider that the tenant suffered any loss from such outages. For these reasons, I dismiss this third aspect of the tenant's claim.

Conclusion

I hereby dismiss the tenant's application, in its entirety, without leave to reapply.

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

Dated: March 8, 2021

Residential Tenancy Branch