



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 18, 2021 (the “Application”). The Tenant applied for compensation related to a Notice to End Tenancy for Landlord's Use of Property.

The Tenant appeared at the hearing. The Landlord appeared at the hearing with the Co-landlord. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and all documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

At the outset of the hearing, I clarified what compensation the Tenant was seeking given the amount sought and materials submitted. I explained section 51 of the *Residential Tenancy Act* (the “Act”) to the Tenant. The Tenant said he was not seeking compensation pursuant to section 51 of the *Act* and was seeking compensation for loss of quiet enjoyment and moving expenses.

Issue to be Decided

1. Is the Tenant entitled to compensation?

Background and Evidence

The parties agreed on the following. There was a written tenancy agreement in this matter. The tenancy started November 01, 2020 and was for a fixed term of six months. Rent was \$600.00 per month due on the first day of each month. The Tenant paid a \$100.00 security deposit and no pet damage deposit.

The parties agreed the Tenant moved out of the rental unit January 10, 2021.

The Tenant sought \$950.00 for loss of quiet enjoyment. The Tenant testified as follows. The Landlord consistently turned down the heat such that the tenants had to use the oven to heat the rental unit. There was a flood in the rental unit and the floor collapsed eight inches which is shown in the photos submitted. The Landlord came into the rental unit while the Tenant was living there to paint and do major structural work. It is not accurate that the Landlord only removed the carpet as stated in the Landlord's materials. The Tenant lost sleep due to the renovations. The Tenant experienced frustration over where he was going to live. The Tenant wants compensation for loss of quiet enjoyment from December 19, 2020 to January 10, 2021.

The Landlord denied that he turned the heat down or off and pointed to gas bills in evidence showing the gas usage was similar to the previous year. The Landlord denied there was a flood in the rental unit. The Landlord testified that the only "renovations" done while the Tenant was living in the rental unit was ripping up carpet from one of the bedrooms that was unoccupied. The Landlord testified that ripping up the carpet took one hour and was done in the afternoon. The Landlord testified that the Tenant received January rent free pursuant to the mutual agreement signed by the Tenant in evidence. The Landlord testified that the kitchen was painted; however, the Tenant was not living in the rental unit when this was done.

The Tenant denied that he was given any rent free.

The Tenant submitted the following relevant documentary evidence:

- A Two Month Notice to End Tenancy for Landlord's Use of Property
- A text message from the Landlord asking the tenants to vacate by January 30, 2021
- A "10 Day Notice" dated January 18, 2021 from the Tenant giving notice to vacate due to no heat and renovations taking place on November 06, 2020 and forcing the Tenant out on November 10, 2020

- A written statement signed by the Tenant and Landlord about the Tenant vacating the rental unit January 29, 2021 and the Landlord waiving rent for January
- Photos of a concrete floor and the surrounding walls
- Copies of cheques
- The written tenancy agreement

The Landlord submitted the following relevant documentary evidence:

- Fortis usage history for 2019 and 2020
- A written note signed by the Tenant dated January 10, 2021 stating the Tenant received his security deposit back and was moving out willingly
- Duplicates of evidence submitted by the Tenant

Analysis

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 28 of the *Act* states:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline 06 deals with the right to quiet enjoyment and states in part:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises...

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The Tenant testified that his right to quiet enjoyment was breached due to the Landlord turning the heat down, a flood, major renovations, and painting. The Landlord denied that any of these things occurred while the Tenant was living in the rental unit. Given the conflicting testimony, I have considered the documentary evidence before me.

The only supporting evidence the Tenant provided about the heat being turned down is his own written statement dated January 18, 2021. I do not find the Tenant's own written statement to be compelling supporting evidence that the Landlord turned the heat down in the rental unit. Nor do I find the written statement to be compelling evidence at all as it contains dates that do not accord with the testimony of the parties in relation to what occurred at the end of this tenancy and when.

The Landlord submitted a Fortis usage summary showing similar usage in 2019 and 2020 to support his position that the heat was not turned down or off.

I am not satisfied based on the evidence provided by the Tenant that the Landlord turned the heat down or off in the rental unit. I do not find that the Tenant has submitted compelling evidence of this.

The Tenant has not submitted any supporting evidence about there being a flood in the rental unit. I am not satisfied that the two photos of a concrete floor show that there was a flood in the rental unit as there is no water or obvious water damage shown in the photos. I would expect there to be documentary evidence such as photos, videos, witness statements or correspondence between the parties about a flood if the rental unit had flooded. There is no such evidence before me. In the absence of further evidence, I am not satisfied there was a flood in the rental unit.

The Tenant submitted his own written statement about renovations and the two photos of a concrete floor and surrounding walls. I do not find the Tenant's own written statement to be compelling supporting evidence that the Landlord did major renovations in the rental unit. Again, I would expect to see documentary evidence such as photos, videos, witness statements or correspondence between the parties about major renovations if such renovations occurred in the rental unit. The two photos of a concrete floor and surrounding walls do not show major renovations. The photos are more consistent with the Landlord's testimony that he ripped up the carpet in one room that was unoccupied. In the absence of further evidence, I am not satisfied that the Landlord did major renovations of the rental unit while the Tenant lived there.

The Tenant has not submitted any supporting evidence showing the Landlord painted the rental unit while the Tenant was living there. Again, if painting occurred and disrupted the Tenant, I would expect to see documentary evidence such as photos, videos, witness statements or correspondence between the parties about the painting. There is no such evidence before me. In the absence of further evidence, I am not satisfied that the Landlord painted the rental unit while the Tenant lived there.

Given the above, I am not satisfied based on the evidence provided that the issues alleged by the Tenant occurred and therefore am not satisfied the Landlord breached the Tenant's right to quiet enjoyment due to the alleged issues.

I do accept that the Landlord ripped up carpet in one unoccupied room while the Tenant was living in the rental unit as the Landlord acknowledged this and the photos support this. However, I accept that this was not a major job and took only one hour as the photos show the room is small. I do not find this to be a breach of section 28 of the *Act* as I am not satisfied based on the evidence provided that it resulted in substantial

interference with the ordinary and lawful enjoyment of the premises or that it amounted to a frequent and ongoing interference or unreasonable disturbance.

Given the above, I am not satisfied based on the evidence provided that the Landlord breached section 28 of the *Act* and therefore am not satisfied the Tenant is entitled to the compensation sought.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

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: May 21, 2021

Residential Tenancy Branch