



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EQUITABLE REAL ESTATE INVESTMENT CORPORATION
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT OLC

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) x 2 both seeking remedy under the *Residential Tenancy Act* (Act) which were duplicated, both of which were for a monetary order in the amount of \$20,250.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and for an order directing the landlord to comply with the Act.

The tenant and an agent for the landlord, PG (agent) attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding the service of documentary evidence during the hearing. I find the parties were sufficiently served as a result as both parties confirmed having been served with documentary evidence and having the opportunity to review that evidence prior to the hearing. While the agent raised concerns regarding the service of one of the two applications made by the tenant, I find that it is a moot point, as both applications were identical, and the agent confirmed being served with one of the two applications.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the

hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issue to be Decided

- Is the tenant entitled to money owed for compensation for damage or loss under the Act?
- Should the landlord be directed to comply with the Act, regulation or tenancy agreement?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on February 1, 2020. The tenant's claim of \$20,250.00 is comprised of 15 months of 100% of the monthly \$1,350.00 rent, or in other words, 100% of the rent back for the entire tenancy due to noise and smoke in the rental unit.

The tenant failed to provide any supporting emails about contacting the landlord and the agent testified that the first time the tenant complained about noise or smoke was on April 17, 2020 when the tenant complained about noise from the unit above. The agent testified that every email the agent responded to in a timely manner until May of 2021 when the tenant was sending up to 15 email complaints per day to the agent.

The tenant continues to reside in the rental unit and admitted that she did not submit evidence from their phone for my consideration or for consideration by the other party. Regarding the April 17, 2021 noise complaint, the agent stated that they immediately spoke to the person living above the tenant who agreed not to use their exercise equipment if it was too noisy. The landlord does not agree with the tenant's claim.

The only documentary evidence submitted by the tenant was a 1.5 page letter describing her concerns but failed to include any specific dates of the month and as a result, the tenant was advised that the tenant's claim was dismissed due to a lack of supporting evidence, which I will address further below.

Analysis

Based on the above, the testimony of the parties, the documentary evidence presented and on a balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where 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.

Based on the above, I find the tenant has failed to provide specific dates of when noise or smoke were impacting them, and that there is insufficient evidence before me that the tenant is entitled to any compensation, let alone 100% of their rent back for the entire tenancy. In other words, I find this claim to be frivolous and without merit. At the very least I would have expected a daily journal from the tenant to advise of days, times and issues that bothered the tenant, and of which could support that the landlord breached the *Act*. Instead, I find the tenant failed to provide any supporting evidence of a breach of the *Act*, specific dates of smoke or noise, and that the landlord provided evidence that they did respond to complaints in a timely manner.

Due to insufficient supporting evidence of the entire monetary claim I find the tenant has failed to meet all four parts of the test for damage and loss. Consequently, I find the tenant's claim has no merit and fails in its entirety. I dismiss the tenant's claim without leave to reapply, due to insufficient evidence.

As the filing fee was waived, it is not granted.

Furthermore, I find that 15 complaints per day as of May 2021 is excessive and that the landlord would be unable to manage the building if they had so many complaints from the tenant. Therefore, I caution the tenant not to overwhelm the landlord with frivolous complaints and to only communicate with the landlord if there is a valid concern under the Act and to provide a reasonable time for the landlord to respond to any such concern.

Conclusion

The tenant's application is dismissed in full without leave to reapply due to insufficient evidence.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 11, 2021

Residential Tenancy Branch