



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RR, OLC (tenant), CNR (tenant);
OPR-DR, MNR-DR, FFL (landlord)**

Introduction

This hearing dealt with applications by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent (“Ten-Day Notice”) pursuant to sections 46 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

All parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

At the start of the hearing, I informed the parties that recording of the hearing is prohibited under the Rules of Procedure. All parties testified they were not recording the hearing.

The parties confirmed their email addresses for mailing of the Decision and any Order.

Agreement During Hearing

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

The parties agreed to a monetary award in the landlord's favour in the amount of \$370.00 for outstanding utilities.

Landlord's claims

At the outset, the parties stated the tenant had vacated the unit. The landlord acknowledged receipt of rent. The issue of the security deposit and pet deposit return had been settled. The landlord accordingly withdrew their claims.

Tenant's claims

The tenant stated they had vacated the unit and the only remaining issue was rent reduction requested in the amount of \$900.00 for the first month's rent (\$1,800.00) paid for March 2021.

Issue(s) to be Decided

Is the tenant entitled to a rent reduction of \$900.00?

Background and Evidence

The parties submitted many documents and photographs as well as considerable disputed testimony in a 56-minute hearing. While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agreed that the tenancy started on March 1, 2021 and ended on June 1, 2021. Monthly rent of \$1,800.00 was payable on the first of the month. The tenant provided a security and pet deposit totally \$1,800.00 which was applied to the last month's rent. There is no outstanding rent.

The parties testified at length to an acrimonious relationship, each attributing wrong motives and behaviour to the other. Each party reported the other to the police several times.

The tenant testified that they arrived in the unit from outside the province and started the tenancy without having viewed the unit. Upon their arrival, the tenant stated they were dismayed to find that the newly constructed building was not completed.

During their first month of tenancy, the tenant testified that several items remained unfinished, were poorly functioning, or were not working at all. Key among these were a bathroom sink faucet, kitchen/pantry shelving and the carbon monoxide/smoke detector.

The tenant sent a letter to the landlord mid-March pointing out the deficiencies, asking they be resolved, and requesting refund of rent.

The landlord stated the outstanding matters were not consequential, did not materially affect the tenant's enjoyment of the unit, or were taken care of as quickly as possible by qualified workers. The landlord denied any responsibility to provide the tenant with a rent reduction.

The parties agreed to an award in the landlord's favour in the amount of \$370.00.

The tenant requested a rent reduction of \$900.00, half of the first month's rent.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. 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.

A landlord is required under the *Act* to provide a unit “suitable for occupation by a tenant”. Section 32 states:

32 (1)*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.***

(emphasis added).

I accept that it was inconvenient for the tenant to have an unreliable bathroom faucet, uninstalled shelving, and the various other deficiencies which they reported. I accept the tenant’s evidence as credible that they experienced some inconvenience in their first month of the tenancy.

I acknowledge that the landlord disagreed with the tenant’s version of events and

asserted that the landlord responded reasonably quickly and provided qualified workers. The landlord asserted they had taken all reasonable steps to fix the problems which were minimal. I accept the landlord's credible testimony that the outstanding matters in the unit were not of a serious nature and that the tenant could live in the unit while they were being fixed.

It is difficult to place a value on the inconvenience the tenant incurred in this situation. I considered *Policy Guideline 16: Compensation for Damage or Loss* which states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- *"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

I find the tenant has suffered some inconvenience; however, the precise valuation of the loss has not been established. I cannot calculate the number of days that the tenant did not have a fully functioning bathroom faucet, for example, or any of the other deficiencies which were fixed over time.

I find this is an appropriate situation to award the tenant nominal damages.

In consideration of all the testimony and evidence, the provisions of the Act and Guidelines, I award the tenant damages of \$370.00.

Summary

I award the landlord the amount of \$370.00 for outstanding utilities, being the amount agreed upon by the parties.

I award the tenant the amount of \$370.00 pursuant to their claim for rent reduction.

As the amount awarded to each party is equal, I make no monetary award in favour of either party pursuant to the provisions of section 72.

Conclusion

Each party is awarded \$370.00 which is offset. No Monetary Order is issued.

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: July 23, 2021

Residential Tenancy Branch