



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, CNL-MT, FFT, CNR, MNRT, LRE, CNR, FFT**

Introduction

This hearing dealt with two applications filed by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for:

- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- more time to make an application to cancel the landlord’s 2 Month Notice to End Tenancy for Landlord’s Use (the “2 Month Notice”) pursuant to section 66;
- cancellation of the 2 Month Notice pursuant to section 49;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The landlord confirmed receipt of the tenant’s two applications, evidence and subsequent amendments. The landlord

testified that they have not submitted any evidence of their own. Based on the testimonies I find the landlord duly served with all of the tenant's materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the parties stated that the tenancy ended on July 31, 2021 with the tenant vacating the rental unit. The tenant withdrew the portions of their application seeking cancellation of the notices to end tenancy and pertaining to an ongoing tenancy.

The tenant said they would like to add a claim for a return of the security deposit. The landlord testified that there is a rental arrear for this tenancy and sought to make a claim for recovery of unpaid rent despite not having filed an application for dispute resolution. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as the parties have not served one another, nor informed them of their respective intention to seek additional claims in accordance with Rule 4.6 and adding new heads of claim without proper notice would be prejudicial to the parties I decline to allow the requested amendments. The parties remain at liberty to file an application for dispute resolution for these issues.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as sought?

Background and Evidence

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 agree on the following facts. This periodic tenancy began in 2014. The monthly rent was \$2,150.00 payable on the first of each month. A security deposit of \$1,050.00 was paid and is still held by the landlord.

The tenant submits that they incurred various costs for maintenance and upkeep of the rental unit during the tenancy for the total amount of \$9,559.00. The work includes repairs of a clothes dryer, furnace, and lawn mower and animal control services to remove raccoons on the property. The tenant submitted invoices from third-party companies for the work done.

The tenant submits that there was an agreement with the landlord where they would be reimbursed for the cost of the work. The tenant testified that they have saved text messages from the landlord wherein the parties agree to reimbursement for the work. The tenant did not submit any of the messages into documentary evidence. The tenant also testified that there are email correspondence between the parties where the tenants informed the landlord of the costs incurred. The tenant did not submit any email correspondence into evidence.

The landlord disputes that there is any agreement between the parties that the tenant would be reimbursed for these costs. The landlord submits that any expenses incurred by the tenant were unilaterally incurred by the tenant with no agreement before or after that the landlord would contribute or reimburse any portion of the expenses.

Analysis

Pursuant to Rule of Procedure 6.6 the applicant bears the onus to establish their claim on a balance of probabilities.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find the tenant's submission that there was an agreement to be reimbursed by the landlord for their expenses to be unsupported in the documentary evidence and disputed by the landlord. I find insufficient evidence to support the tenant's claim. The tenant referenced text messages and email correspondence but chose not to submit any of these materials into documentary evidence. I draw an adverse inference from the failure of the tenant to submit these materials. If there was an agreement between the parties it would be reasonable to expect that the applicant would submit into documentary evidence that agreement or communications referencing such an agreement. The tenant chose to not provide documentary evidence of any such arrangement between the parties.

I further note that there is little evidence that the expenses incurred by the tenant meet the definition of emergency repairs pursuant to section 33 of the *Act*. The invoices for the work show no urgency to the issues and I find little evidence that the tenant attempted to contact the landlord to have repairs made. I find little basis for the tenant's claim that they are entitled to reimbursement for these expenses incurred.

I find that the tenant has provided insufficient evidence in support of their application for a monetary award. I find the tenant's testimony, unsupported in the documentary evidence and disputed by the landlord to be insufficient to meet their evidentiary onus on a balance of probabilities. Consequently, I dismiss the tenant's application seeking a monetary award.

As the tenant was unsuccessful in their application they are not entitled to recover the filing fee from the landlord.

Conclusion

The tenant's applications are dismissed in their entirety 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: August 26 2021

Residential Tenancy Branch