



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RR, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an authorization to recover the filing fee for this application, under section 72.

Tenants SN (the tenant) and TA and landlord XJ attended the hearing. Landlord XJ was assisted by advocate RL (the landlord). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The tenant affirmed she served the notice of hearing and the evidence (the materials) in person on June 12, 2021. The landlord confirmed he received a package from the tenants containing the materials and did not serve response evince. Based on the testimony offered by both parties, I find the tenants served the materials in accordance with section 89(1)(a) of the Act.

Preliminary Issue – Vacant Rental Unit

At the outset of the hearing both parties agreed the tenants moved out on July 31, 2021. The application for an order for the landlord to comply is moot since the tenancy has ended and the tenants left the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order for the landlord to comply.

Preliminary Issue – application for a monetary order under section 67

The tenants' application for an order to reduce the rent for repairs states:

We want the last month's rent removed/reimbursed for the undue stress caused being removed for false reason (lost of quiet enjoyment due to restricting guests), in the middle of a pandemic, and also for wages lost for having to move prematurely. We are also requesting four hundred dollars extra for cost of moving. Proof has been added to the section for landlord failing to act on our tenancy agreement.

The tenants submitted into evidence a monetary order worksheet dated May 19, 2021 indicating claims for "last month's rent, \$1,900.00" and "move out costs for 3 people, \$4,000.00" in the total amount of \$2,300.00. The tenant affirmed she is seeking moving costs in the amount of \$400.00.

Based on the application and the monetary order worksheet, I find the tenants clearly stated that they are applying for a monetary order for compensation for loss of quiet enjoyment and moving costs, per section 59(2)(b) of the Act.

I accept the tenants' application for compensation under section 67 of the Act.

Issues to be Decided

Are the tenants entitled to:

1. A monetary order for compensation?
2. An authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenants' obligation to present the evidence to substantiate the application.

Both parties agreed they entered into a fixed-term tenancy from November 01, 2020 to October 31, 2021. Monthly rent of \$1,900.00 was due on the first day of the month. The tenants vacated the rental unit on July 31, 2021. At the outset of the tenancy a security deposit of \$950.00 and a pet damage deposit of \$100.00 were collected. The landlord returned the deposits. A copy of the tenancy agreement was submitted into evidence.

The tenant affirmed she received a one month notice to end tenancy on May 14, 2021 (the Notice), she did not dispute the Notice because the landlord had a toxic relationship with the tenants and moved out. The tenant tried to communicate with the landlord about tenancy issues, but the landlord refused to communicate with her.

The tenants are claiming for \$1,900.00 for loss of quiet enjoyment. The tenant affirmed she was forced to move out before the end of the fixed-term tenancy and she did not have the right of quiet enjoyment because the landlord was aggressive and abusive during the last month of the tenancy.

The tenant affirmed she asked the landlord to repair the water supply and the bathroom on May 13, 2021, the rental unit did not have water supply for three days and the bathroom could not be used for five days. The landlord affirmed he repaired the water supply and the bathroom one day after the tenants asked for repairs.

The tenant affirmed that during the move out inspection the landlord was very rude and physically assaulted her. The landlord affirmed she was not rude and that she did not assault the tenants.

The tenants are claiming \$400.00 for premature moving costs.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

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

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

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

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 the case is on the person making the claim.

Loss of quiet enjoyment

Section 28 of the Act states:

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.

Residential Tenancy Branch Policy Guideline 6 states:

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).

(emphasis added)

In the case before me, both parties have provided conflicting testimony regarding issues related to repairs and the landlord's behaviour during the tenancy. The tenants did not provide any documentary evidence to support their claims. The tenants did not call any witnesses.

Thus, I find the tenants have failed to prove, on a balance of probabilities, that the landlord breached the act.

I dismiss the tenants' claims for compensation for loss of quiet enjoyment.

Moving expenses

The tenants did not dispute the Notice and moved out of the rental unit. The tenants could have disputed the Notice and submitted an application during the tenancy because of the alleged landlord's behaviour. The tenants' moving expenses are not related to the landlord not complying with the Act.

Thus, I dismiss the tenants' application for compensation for moving expenses.

Filing fee

As the tenants were not successful, pursuant to section 72 of the Act, the tenants must bear the cost of the filing fee.

Conclusion

The tenants' application is dismissed 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: September 27, 2021

Residential Tenancy Branch