



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HomeLife Advantage Realty Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

TT: CNR, RR, OLC
LL: MNDCL-S, MNRL-S, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenants’ Application for Dispute Resolution was made on June 4, 2021 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 4, 2021 (the “10 Day Notice”);
- an order granting a rent reduction; and
- an order the Landlord complies with the *Act*.

The Landlord’s Application for Dispute Resolution was made on June 23, 2021 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent;
- a monetary order for damage or compensation;
- an order to retain the Tenants’ security deposit; and
- an order granting recovery of the filing fee.

The Tenant’s Advocate T.C., and the Landlord’s Agent V.F. attended the hearing at the appointed date and time. At the start of the hearing, T.C. stated that she was attending the hearing on behalf of Tenant K.T.. T.C. stated that K.T. was in school and was unable to attend the hearing. As such, T.C. requested an adjournment. T.C. stated that she was unsure about Tenant M.E.’s whereabouts. The Landlord’s Agent denied the request for an adjournment.

Preliminary Matters

According to the Residential Tenancy Branch Rules of Procedure (the “Rule of Procedure”) 7.9, without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party’s request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

In this case, I find that the Tenants provided insufficient evidence to demonstrate that they were both unable to attend the hearing. While T.C stated that Tenant K.T. was in school, I find that Tenant K.T. could have reasonably anticipated that her schedule conflicted with the hearing date and time and could have contacted the Tenancy Branch in advance to reschedule, or else appoint someone to attend the hearing in their absence. As, such, I denied adjourning the hearing.

I find that the Landlord’s Agent attended the hearing and was prepared to proceed. The Tenant’s advocate stated that she wished to stay on and take part in the hearing, therefore, the hearing continued.

The Landlord confirmed receipt of the Tenant’s Application and documentary evidence package. As such, I find these documents were sufficiently served to the Landlord, pursuant to Section 71 of the *Act*.

T.C. stated that she was unsure if the Tenants’ received the Landlord’s Application. I find that the Landlord provided no documentary evidence in support of their Application having been served to each respondent. As such, I dismiss the Landlord’s Application with leave to reapply.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession, and an order requiring the payment of the unpaid rent, if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

At the start of the hearing the parties testified and agreed that the tenancy has ended. As such, the Landlord does not require an order of possession. The hearing continued based on the Tenant's monetary claim for compensation, as well as to consider if the Landlord is entitled to monetary compensation relating to the unpaid rent associated with the 10 Day Notice, pursuant to Section 55 of the *Act*.

Issue(s) to be Decided

1. Are the Tenants entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 55 and 67 of the *Act*?

Background and Evidence

A tenancy agreement was submitted which indicates; the tenancy started on December 1, 2020. During the tenancy, the Tenants were required to pay rent in the amount \$2,500.00 which was due on the first day of each month. The Tenants paid a security deposit and a pet damage deposit both in the amount of \$1,250.00, for a total of \$2,500.00 currently being held by the Landlords. The parties testified and agreed that the tenancy ended on June 30, 2021.

The parties testified and agreed that the Tenants withheld their last month of rent in the amount of \$2,500.00 for June 2021. The Tenant's advocate stated that the Tenants were subjected to frequent unscheduled visits by the Landlord and construction workers coming and going, as the Landlord was conducting renovations to the rental unit. The Tenant's advocate stated that workers were replacing a portion of the deck, and left it open for a day, which caused a safety concern for the Tenants and their children. The Tenants provided a copy of several emails they sent to the Landlord expressing their displeasure.

The Landlord's Agent stated that the workers were at the rental property to replace a leaking hot water tank. The Landlord's Agent stated that she was unaware of any other work aside from the replacement of some deck boards, which was completed the following day.

Analysis

Section 28 of the Act, states that 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
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

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.

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.

The Residential Tenancy Branch Policy Guideline #16 Compensation For Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- *Loss of access to any part of the residential property provided under a tenancy agreement;*
- *Loss of a service or facility provided under a tenancy agreement;*
- *Loss of quiet enjoyment;*
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and*

- *Damage to a person, including both physical and mental*

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.

Section 32(1) of the Act states that 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 the tenant.*

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I make the following findings:

In this case, I accept that there was some work completed at the rental unit. The Tenant's documentary evidence provided emails to the Landlord; however, I find they lacked specifics aside from a portion of the deck being replaced and other general repairs being conducted. The Tenants' seemed to allude to the fact that a previous property manager notified them that they would not have to pay their last month of rent, however, neither the Tenants, nor their advocate provided any evidence in support of this notion.

I find that the Tenants provided insufficient evidence to demonstrate that they are entitled to compensation as a result of the Landlord breaching their quiet enjoyment due to some repairs they did at the rental unit. I dismiss the Tenants' claim without leave to reapply.

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

I find that the Tenants provided insufficient evidence to demonstrate that they were entitled withholding June 2021 rent from the Landlord. I find that the 10 Day Notice served to the Tenants by the Landlord meets the requirements set out in Section 52 of the Act. As such, I find that the Landlord is entitled to a monetary award in the amount of \$2,500.00 for the loss of rent for June 2021. Further, I find it appropriate in the

circumstances to order that the Landlord is entitled to retain the security and pet damage deposits held in full satisfaction of the claim.

Conclusion

The Tenants' Application seeking to cancel the 10 Day Notice is dismissed as the tenancy has ended. The Tenants' provided insufficient evidence to support their claim for monetary compensation. The Landlord is entitled to a monetary order for the unpaid rent for \$2,500.00 as the Tenants were not entitled to withholding this amount. The Landlord is entitled to retaining the Tenants' security and pet damage deposits in full satisfaction of the claim.

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: October 04, 2021

Residential Tenancy Branch