



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Re/Max Crest Realty Westside and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes

CNR, MNDCT, FFT

Introduction

The tenant completed an Application for Dispute Resolution (the "Application") on June 9, 2021, for cancellation of a notice to end tenancy, compensation for monetary loss/money owed, and reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on October 8, 2021. The tenant attended the scheduled teleconference hearing; the landlord did not attend. At the outset, I advised of the hearing protocol and ensured the tenant's immediate questions were answered.

Preliminary Matters

At the time of their Application, the tenant was interacting with an agent for the landlord. After they applied, the agent advised the tenant to contact the owners directly. The landlords are the owners. I amend the tenant's Application to name the landlords/owners (hereinafter the "landlord") as Respondents in this matter.

The tenant advised the landlord's agent of this hearing initially on June 30, 2021. The tenant provided a copy of that email in their prepared evidence. The tenant also advised the landlord via registered mail of this hearing. A receipt and an image of the envelope used are in the tenant's evidence.

The landlord did not attend the hearing at the scheduled time of 9:30am. The landlord was advised of the hearing date and time, in advance, in the following ways:

- The landlord's agent gave the information to the landlord and confirmed this with the tenant. The tenant stated this in the hearing as part of their affirmed testimony.

- An image of the registered mail contents to the landlord is in the tenant's evidence. This shows an instruction/information sheet provided directly to the landlord.
- The tenant responded to the landlord's own separate hearing process by written letter again specifying the October 8 hearing date.
- A communication record on the Residential Tenancy Branch file shows the landlord inquired on the status of this file to the Residential Tenancy Branch in person on October 1. That note shows the agent of this office confirmed with the landlord there was an October 8 hearing date.

The landlord did not provide documentary evidence in response to this claim of the tenant. Instead, the landlord applied for a hearing that is filed separately from this one. The landlord entered the conference call for this hearing at 10:24am. At that time, I had concluded the hearing with the tenant and was just proceeding to end the conference call.

I decline to adjourn the matter for the reason of the landlord's non-attendance at the hearing and lack of evidence filed in response to this claim. The tenant made the landlord aware of this hearing, following the Rules of Procedure and other instructions from this office in order to do so. The landlord has filed their own Application for a future separate hearing, despite having the opportunity to respond to the tenant's claim here. The landlord had instructions on how to respond to the tenant's claim; to allow them to do so at this stage is prejudicial to the tenant.

Additionally, the tenant prepared their submissions and updated them to reflect the landlord's monetary claim in the separate file. That takes the form of data entered into a spreadsheet, and this affects the tenant's own calculations in their monetary claim. I decline to evaluate this piece of the tenant's evidence as it stems from a separate hearing process initiated by the landlord, and it is excluded from my consideration.

On their Application, the tenant sought to dispute the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10-Day Notice"). The landlord issued this end-of-tenancy notice on June 7, 2021, indicating an unpaid utilities amount. In the hearing, the tenant advised the tenancy ended when they moved out on July 31, 2021. Given that the tenancy has ended, the validity of the 10-Day Notice is not at issue. I dismiss this portion of the tenant's Application, without leave to reapply.

In their own monetary claim, the tenant amended the spreadsheet and claimed amount to factor in the return of the security deposit. The tenant informed me of the upcoming

hearing addressing the landlord's subsequent Application. From this, I am aware that the landlord made a timely claim after the end of the tenancy, and this does involve the landlord's right to compensation, utilizing the held security deposit amount. The return of the security deposit is properly the subject of that upcoming separate hearing. Moreover, I find that any decision on its return would be prejudicial to the landlord in that they may have not been fully informed of the amendment, leaving them without the opportunity to address the dispensation of the security deposit in a procedurally fair manner. For these reasons, I decline to amend the tenant's Application in the hearing stage.

Issues to be Decided

Is the tenant entitled to monetary compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The tenant provided a copy of the tenancy agreement for the rental unit. Both parties signed the agreement on April 29 and April 30, 2019 for the tenancy starting on June 1, 2019. The rent amount agreed to was \$8,000 payable on the first of each month; however, the tenant stated this was adjusted by agreement to \$7,500. The tenant paid a security deposit of \$4,000 on April 30, 2019.

The tenant paid for utilities each month; this included garbage, sewer, and water. The landlord's agent would forward the actual invoice to the tenant, and the tenant would pay this to the municipality on their own. The tenant provided that the landlord agent forwarded invoices late, and even missed one entirely. This precluded the tenant from a discount-system offered by the municipality; this was a 10% discount where the invoice was paid within 3 weeks. When this happened on a couple of occasions, the tenant stated the landlord's agent was "good about this."

The tenant presented a detailed spreadsheet in their evidence, updated two times since their Application in order to factor in subsequent invoice amounts. This is to show the tenant's claimed compensation amount, updated since their Application, with the current claim at \$254.79.

This arises from a hot water tank leak in the rental unit. The tenant maintains the leak began in April 2020, not plainly visible due to its crawl-space location. The tenant concluded the leak started at that time due to the sudden increase in water consumption, comparing March 2020 to April 2020.

According to the tenant, the landlord maintains the leak started in December 2020 due to its not being observed by a repairperson in November 2020. The leak was eventually repaired and stopped in April 2021. The tenant separately confirmed with the repairperson that they *had* identified the leak in November 2020 when they visited.

The tenant created the spreadsheet showing all invoice amounts from April 2020 onwards. On the Application, the tenant shows “a >70% increase in water usage.” The salient points of this data are:

- the monthly water consumption never exceeded 39 cubic metres (“cbm”) for the first 8 months of the tenancy;
- in April 2020 this increased to 57 cbm and then increases continuously, then dropping back down again in April 2021;
- with available data and the tenant’s own calculation, this ranges in % increase from 112% to 200% increase monthly, compared to the prior year monthly data (the “Y-o-Y increase”).

The tenant also provided quarterly water invoice data. Based on the quarterly consumed and actual invoice amounts of each co-equivalent quarter – pre-leak start in April 2020 – the tenant arrived at amounts for what they believe they should rightfully pay. In some situations (the latter three quarters of 2020), this creates a credit to the tenant (\$1,574.24); in other situations (for 2021, up to July 21) this is a debit (-\$1,349.45). With the leak starting in April 2020 (i.e., the 1st quarter of 2020) and ending in April 2021 (i.e., the 1st quarter of 2021), the calculated amount is \$254.79.

The tenant was aware of the principle of mitigation, and twice in the hearing they stated they used the higher amount from each respective prior year quarter. That is to say, it does not include the 10% discount. These numbers are shown in the spreadsheet, and each of the associated prior year’s quarterly amounts are based on “normal usage”, pre-leak discovery.

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The relevant portion of the tenancy agreement rests in part 10 covering repairs: “The landlord must provide and maintain the residential property in a reasonable state of decoration and repair. . .”

From what the tenant presented on the technical aspect of the leak, I am satisfied it was a situation of damage for which the tenant was not responsible. I find it was reasonable for the tenant to conclude the leak started in April 2020 due to increased utility costs. I am also satisfied the tenant made the landlord aware of the issue. A separate issue was repaired in December 2020; however, I accept the tenant’s testimony that the person identified the leak though did not repair it properly. The situation thus continued, and I am satisfied the tenant made the landlord’s agent aware of the situation.

As per the tenancy agreement, this is not a *reasonable* state of repair where an ongoing issue had a significant impact on utility amounts paid by the tenant. I find the landlord’s final repair was a loss to the tenant, stemming from the landlord’s breach of the tenancy agreement provision of a *reasonable* state of repair. In sum, the costs to the tenant were *unreasonable* in a situation that the landlord could have resolved.

I am satisfied that the lack of repair led to sustained higher-than-normal utility amounts. This continued through to April 2021. I find this is plainly evident in the accounting provided by the tenant, without evidence to the contrary. I find the tenant has provided sufficient evidence to establish the value of the damage or loss.

Furthermore, the tenant was diligent in updating this information as more data came to them after the end of the tenancy. In actuality, this significantly reduced the amount set out in their Application. This and their choosing to take the higher baseline normal value from the prior year's normal utility usage represents an effort at mitigating the loss in this situation.

For these reasons, I find the tenant is successful in their claim for compensation. I so award their claimed amount of \$254.79. Because the tenants were successful on their monetary claim, I award compensation of the Application filing fee.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the tenant a Monetary Order in the amount of \$354.79. I provide this Order to the tenant, and they must serve it to the landlord as soon as possible. Should the landlord fail to comply with this Order, the tenant may file it in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: October 13, 2021

Residential Tenancy Branch