



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-MT, OLC, LRE, RR, RP, MNDCT

Introduction

On July 30, 2021, the Tenant made an Application for Dispute Resolution seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "*Act*"), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking to restrict the Landlord's right to enter pursuant to Section 70 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, and seeking a Monetary Order for compensation for pursuant to Section 67 of the *Act*.

The Tenant attended the hearing, with D.G. attending to assist her. The Landlord attended the hearing as well, with S.V. attending as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance, with the exception of D.G., provided a solemn affirmation.

The Tenant advised that the Landlord was served the Notice of Hearing and evidence package by registered mail and by hand on or around August 16, 2021, but she did not check to see if the Landlord could view her digital video evidence. S.V. advised that he notified the Tenant in February 2021 that he would be taking over management of the

rental unit, and he considered himself the landlord. He stated that the named Respondent is his father and he confirmed that the title of the rental unit only changed from the Respondent's name to S.V.'s name sometime last week. He acknowledged that the Respondent received the Notice of Hearing and evidence package back in August 2020, but this was put away and forgotten about until the Respondent gave the package to S.V. last week. As such, it is his position that as the landlord, he was not served this package.

Clearly, the Respondent was the owner of the rental unit up until the title of the property changed hands sometime last week. As such, I am satisfied that the Respondent was still the owner of the rental unit and that S.V. was simply acting as this person's agent until the ownership changed. Consequently, I am satisfied that the named Respondent was the Landlord at the time this Application was made. As such, I am satisfied that the Landlord was duly served the Notice of Hearing and evidence package in accordance with the *Act*. As this package was only handed to S.V., the Landlord's agent, sometime last week, I find that this is a fault of the Landlord's mishandling of the documents. As the Landlord was already aware of the Application against him, I find that it was negligence on the Landlord's part if he failed to hand this to his agent in a timely manner.

As S.V. confirmed that the Landlord received this package and could view the evidence, I have accepted the Tenant's evidence and will consider it when rendering this Decision.

S.V. advised that the Landlord's evidence was not served to the Tenant. As noted above, the Landlord had this package approximately two months ago and had sufficient time to respond. As this evidence was submitted late and was not served to the Tenant, I have excluded this evidence and will not consider it when rendering this Decision.

All parties agreed that the Tenant gave up vacant possession of the rental unit on August 1, 2021. As such, the matters with respect to cancelling the Notice and other issues, except for the request for monetary compensation, are moot points and do not need to be considered.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 15, 2020 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on August 1, 2021. The rent was established at an amount of \$600.00 per month and it was due on the first day of each month. A security deposit of \$300.00 was also paid. A copy of the written tenancy agreement was submitted as documentary evidence for consideration on this file.

The Tenant advised that she was seeking compensation in the amount of **\$1,600.00** because she received exceptionally high electricity bills and it was her belief that this was on account of a broken hot water tank and due to faulty wiring in the rental unit. Her bills were in excess of \$500.00 every two months and other similar neighbouring units would have bills between \$150.00 to \$300.00 for the same period. She stated that the hot water tank only produced lukewarm water from the start of the tenancy and she first brought this up to the Landlord's attention in or around January 2021. However, the Landlord did nothing to address her concerns. She stated that she was told that the tank was the original from 1960, but there was no documentary evidence to support this. She submitted that an acquaintance informed her that the hot water tank was not likely heating up the water fully.

Regarding the faulty wiring, it was her belief that this could have been a contributing factor to her high electric bills; however, other than her speculation, she has no proof of this. She suggested that rats could have entered the rental unit through a hole in the wall and chewed the wires. As well, she stated that neighbouring tenants had their electrical wiring issues repaired by the Landlord.

S.V. advised that there is a new tenant in that rental unit currently and the first two electrical bills were \$40.00 and \$60.00 respectively. He stated that the only times that the Landlord was advised of any issues by the Tenant were by text or email, but there was no indication of any problems with the hot water tank or wiring. He stated that the Landlord has not had a need to change any of the appliances or the hot water tank after this particular tenancy ended. As well, if anything, if the hot water tank was only producing lukewarm water, the electricity bill should be lower.

The Tenant responded by stating that the bills were higher as the faulty hot water tank would continuously be attempting to heat the water inefficiently.

The Tenant advised that she was seeking compensation in the amount of **\$800.00** because she was forced to eat out due to the power being cut to the rental unit from May 2021 until she gave up vacant possession of the rental unit. She referenced bank statements submitted as documentary evidence to support some expenses of eating out. She confirmed that she was responsible for paying for the utilities; however, she could only pay a portion of the unusually high electricity bills and the utility was eventually cut off. She stated that she did not use the heat in the rental unit.

S.V. did not make any submissions with respect to this issue.

Finally, the Tenant advised that she was seeking compensation in the amount of **\$300.00** because she was displaced for the first two weeks of the tenancy due to a broken toilet and the uncleanliness of the rental unit. It was not a liveable space until October 28, 2020 when the Landlord fixed the toilet. She stated that she brought up the condition of the rental unit at the start of the tenancy, but the Landlord informed her that it was her responsibility to clean and fix. There was mouse feces in the cupboards and mouldy, rotten food left. She stated that the toilet would not flush, and that the rental unit smelled of sewage. She did not submit any documentary evidence to support these claims.

S.V. advised that the Landlord took the first two weeks of October 2020 to clean and paint the rental unit and that the Tenant only chose to move in after two weeks. He confirmed that the Landlord was advised about a problem with the toilet but there was no indication about the cleanliness of the rental unit. He acknowledged that he replaced the entire toilet on or around October 28, 2020.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 32 of the *Act* outlines the Landlord's responsibility to repair and maintain the rental unit in a manner that complies with the health, safety and housing standards required by law, and that makes it suitable for occupation by a tenant.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the Tenant's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Furthermore, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As well, given the contradictory testimony and positions of the parties, I must also weigh the credibility of the parties. I have considered the parties'

testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Tenant's first claim for compensation in the amount of \$1,600.00, I note that the Tenant provided little in the way of documentary evidence to support her claims that there were some neglected repair issues in the rental unit which caused her electricity bills to be higher than anticipated. As her claim is based on mostly speculation and conjecture, I am not satisfied that she has submitted sufficient compelling or persuasive evidence to support this. As such, I dismiss this claim without leave to reapply.

Regarding her claim for compensation in the amount of \$800.00 for the cost of being forced to eat out, I note that as above, I am not satisfied that the Tenant has corroborated that there were problems with the rental unit which caused her utility bills to be so high. Furthermore, it was the Tenant's reluctance to pay the utility bill which led to the electricity being cut off. I acknowledge that it is the Tenant's position that she could not afford to pay these bills, and this was due to negligence on the part of the Landlord. However, I do not find that what was presented by the Tenant corroborates her allegations. As such, I dismiss this claim in its entirety.

Finally, with respect to the Tenant's claim for compensation in the amount of \$300.00, while there was no move-in inspection report, which the Landlord was required to conduct, I do not find that the Tenant has provided sufficient evidence to support that the rental unit was not provided to the Tenant in a condition that was suitable for renting, other than the issue with the toilet. I accept the undisputed evidence that S.V. replaced the toilet in late October 2020 as there was a problem with it; however, I do not find that this rendered the rental unit completely unliveable. As it is undisputed that it was necessary to replace the toilet, and that the Tenant was without a fully functioning one for a period of time, I grant the Tenant a monetary award in the amount of **\$50.00** for this loss.

Conclusion

Based on the above, the Tenant is provided with a Monetary Order in the amount of **\$50.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in

the Small Claims Division of the Provincial Court and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 18, 2021

Residential Tenancy Branch