



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, CNR-MT, RP, RR, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

As the parties confirmed that there were no issues with service of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Preliminary Issues: Discussion of Issues

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

Both parties discussed the issues before them, and achieved a resolution of some of the issues in the tenant's application for dispute resolution.

1) Notices to End Tenancy:

At the outset of the hearing, the landlord confirmed that although the tenant was served with two 10 Day Notices to End Tenancy dated April 7, 2021 and May 19, 2021, the landlord was not requesting an Order of Possession pursuant to those 10 Day Notices, and wishes to cancel the two Notices at this time. Accordingly, the two 10 Day Notices to End Tenancy are cancelled, and are of no force or effect. The tenant's corresponding applications in relation to the two 10 Day Notices are cancelled, and the tenancy will continue until ended in accordance with the *Act*.

2) Outstanding Repairs and Pest Issue:

The tenant confirmed the outstanding repairs in the rental unit have not been addressed by the landlord, and testified that they have not been provided a timeline of when the repairs would be addressed. The landlord responded that some of the items have already been purchased such as the closet doors and light fixtures, but due to other pressing issues in the building, the landlord has not had the chance to dispatch a repair person or contractor. The landlord testified that there are thirty-three units in the building, and that they were trying their best to address the issues. The tenant responded that some of the issues have been outstanding since 2009.

The landlord testified that they had a contractor inspect the patio, and did not find any harmful mould. The landlord also testified that the deck was sprayed twice for wasps and ants. The tenant responded that the wasps and ants are back.

The landlord agreed to do the following:

1. The landlord agreed to meet with the tenant and the contractor on Wednesday, October 13, 2021 between the hours of 9:30 am to 2:00 p.m. to do a walk-through and discuss a plan to address the outstanding issues.
2. The landlord agreed to call pest control by Monday to arrange for someone to deal with the pest issue.

3) Tenant's Monetary Claims for Back Pain & Patio Damages/Mould/Insect Infestation:

The tenant confirmed that they wished to withdraw these claims listed as #2 and #6 on the tenant's monetary worksheet at this time with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

4) Tenant's Monetary Claims for Utilities & Dry Cleaning:

The landlord agreed in the hearing to compensate the tenant \$100.00 for the utilities used for the fans as well as \$56.00 to cover the cost of the tenant's dry cleaning.

Issues

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to a monetary compensation for money owed under the Act, regulation, or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Both parties provided written submissions and evidence, as well as sworn testimony in the hearing. While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on June 1, 2009. The tenant's rent is subsidized based on the tenant's income, and which is set every year based on an annual review. The tenant's portion of rent at the time of the hearing is set at \$550.00. The landlord collected a security deposit of \$400.00 at the beginning of the tenancy which they still hold.

The tenant requested the following monetary orders:

Item	Amount
Reimbursement of the overpayment of rent for September & October 2019	\$512.00
Loss of enjoyment of one of the bedrooms	1,800.00

due to the fire. 12 x \$150.00	
Total Monetary Order Requested	\$2,312.00

The tenant filed an application for reimbursement of the rent collected for September and October 2019 rent totalling \$512.00. The tenant believes that there was an overpayment of rent as rent should have been set at \$310.00 for those two months, but the landlord assessed the monthly rent at \$566.00. The tenant testified that there were delays due to circumstances beyond the tenant's control, which affected the reassessment process, and that the tenant had verbally informed the landlord of the situation. The tenant testified that she had requested an adjustment, which was denied by the landlord.

The landlord testified that the tenant was responsible for showing proof of income, and the rent was set based on that income. The landlord testified that they did attempt to lower the monthly rent to \$310.00 for those two months, but proof of income was requested which was not supplied by the tenant. The landlord submitted the written request from the government agency responsible for housing dated December 13, 2019, which the landlord states was the second request. The landlord testified that they had attempted to work with the tenant, and resolve the issue with no success. The landlord submitted the correspondence with the tenant in their evidence.

The tenant also filed for a rent reduction in the amount of \$150.00 for the months of July 2019 to June 2020 as the tenant lost use of one of the bedrooms due to a fire in the complex. The tenant testified that the fire had caused a substantial loss in the enjoyment of their space, which caused significant water and smoke damage. The tenant testified that the carpet and underlay had to be ripped up, and that there were two giant holes in the wall, which included a four feet by four feet hole under the window. The tenant testified that the landlord took over a year to complete the repairs and restoration, and that the smoke damage was so bad that they contractors had to use a special paint. The tenant testified that the fans were to be on day and night, and were extremely loud. The tenant testified that this bedroom was one of three in the unit.

The landlord responded that the tenant could still have used the bedroom, and that the tenant was only deprived of the full use of the room for two weeks. The landlord testified that the restoration company did take a year to complete all the work due to permitting issues.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (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.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I have considered the tenant's application in relation to the overpayment of rent. In light of the evidence before me, I am not satisfied that the landlord had assessed an amount of rent above what the landlord was required to collect. I find that the landlord provide sufficient evidence to support that the amount assessed was based on the tenant's income as supported by documents submitted by the tenant. I find that the landlord had demonstrated that specific documents were requested, which were not provided by the tenant for the period requested, and as a result the landlord had no choice but to collect

the amounts for this period. Accordingly, I dismiss the tenant's application for reimbursement of the rent without leave to reapply as I am not satisfied that there was an overpayment of rent.

The tenant also applied for a rent reduction in accordance with the following provisions of section 65 of the *Act* which allows me to make an order regarding past and future rent:

65 (1) *Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:...*

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;...

I find in this case, the tenant did experience a reduction in the value of the tenancy agreement due to the fire, and resulting repairs and restoration. In assessing this claim, I first note that the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. Based on the evidence before me, I accept that the tenant lost the use of one of the three bedrooms in the rental unit for at least two weeks. The tenant testified that for up to the year, the tenant and their family were not able to enjoy the bedroom as they normally could due to the pending restoration work that took a year to complete.

I have considered the tenant's claim of \$150.00 for twelve months. I am not satisfied that the tenant is entitled to a rent reduction in the amount claimed, but I do find that the tenant did suffer a loss that reduced the value of his tenancy, for at least two weeks full weeks, and then a partial loss for the remainder of the time it took to complete the restoration.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award

“nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

Although I am satisfied that the tenant did lose some value in the tenancy due the unfortunate circumstances that took place due to the fire, I am not satisfied that the tenant had sufficiently supported the amount of the loss as claimed. As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the tenant nominal damages of \$200.00 for the two weeks of initial repairs, and additional \$50 per month for the remaining 11.50 months, for a total monetary order of \$775.00.

As the tenant was partially successful in their application, I allow the tenant to recover the \$50.00 filing fee for this application.

In order to implement the monetary awards granted in this application, I order the tenant to reduce their future monthly rent payment until the monetary awards are paid.

Conclusion

As the landlord withdrew the two 10 Day Notices to End Tenancy, the two 10 Day Notices dated April 7, 2021 and May 19, 2021 are cancelled, and are of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

As the landlord agreed to reimburse the tenant \$100.00 for the utility bill and \$56.00 for the dry cleaning, I allow the tenant these monetary awards. I also allow the tenant a monetary award of \$775.00 for the loss of the use of the bedroom due to the fire. The tenant may also recover \$50.00 of the filing fee.

The tenant is granted a monetary order totalling \$981.00. In order to implement the monetary awards granted in this application, I order the tenant to reduce their future monthly rent payments until the full amount is paid. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$981.00, 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.

The tenant's application for the reimbursement of rent for September and October 2019 is dismissed without leave to reapply.

The remainder of the tenant's application is considered cancelled with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

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 4, 2021

Residential Tenancy Branch