



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Plan A Real Estate Services LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

RR, RP, MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenant seeking an order reducing rent for repairs, services or facilities agreed upon but not provided; an order that the landlord make repairs to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony.

The tenant testified that all evidence has been provided to the landlord. The landlord did not dispute that testimony, and no evidence has been provided by the landlord. All evidence of the tenant has been reviewed and is considered in this Decision.

During the course of the hearing the tenant testified that he vacated the rental unit in August, 2021 and therefore, I dismiss the tenant's applications for an order reducing rent and for an order that the landlord make repairs to the rental unit.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of use of a portion of the rental unit?

Background and Evidence

The tenant testified that this fixed-term tenancy began on June 1, 2021 and expired on August 31, 2021 thereafter reverting to a month-to-month tenancy. The tenant vacated the rental unit on August 20, 2021. Rent in the amount of \$2,300.00 was payable on the 1st day of each month and there are no rental arrears. On March 30, 2021 the tenant paid a security deposit to the landlord in the amount of \$2,300.00 which has been returned in full to the tenant, and no pet damage deposit was collected. The rental unit is a 1 bedroom, plus den suite in a complex containing about 20 floors, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that the rental unit had 1 bedroom and a den, and only the bedroom had carpeting. During the move-in condition inspection, the tenant and the landlord's agent at that time were wearing masks. However, at move-in the tenant noticed a strong urine smell in the bedroom and immediately notified the landlord who had given the tenant keys and conducted the inspection. The landlord's agent said that he would talk to the manager, but no response was received. On June 4, 2021 the tenant sent an email about the smell and other repairs required, such as the vent above the stove, lights in the bathroom, and the shower turn-off, which was broken.

On June 8, 2021 the landlord sent a carpet cleaner who removed all stains in the bedroom but that didn't get rid of the smell. The following day the tenant sent another email to the landlord and again received no response. On June 15, 2021 the tenant went to the landlord's office. The tenant received an email back saying that the carpet cleaner did a good job, but the smell was still there. The same carpet cleaner arrived again on June 18, 2021 but did not clean the carpet. The carpet cleaning person sprayed something on the carpet but that only made it smell better for about an hour and said the only way to get rid of the smell was to replace the carpet due to dog urine. It was not a carpet that the tenant could roll up.

On June 21, 2021 the tenant sent an email to the landlord saying what the tenant was told by the carpet cleaning person and the following day the tenant received a response saying that the landlord would have to talk to a senior manager. The tenant followed up again on June 24, but did not receive a response. The tenant testified that he also called the landlord several times, on June 11 and 12 as well as twice on the 14th and twice on the 21st, and only once did the landlord pick up the phone. No response was received from the emergency phone of the landlord.

On July 10, 2021 the tenant made this Application for Dispute Resolution and 2 hours after serving the landlord at the office the tenant received a call saying that the landlord would send someone to see what the issue was.

On August 12, 2021 finally someone was sent to the rental unit and confirmed that the smell was really strong.

Smells can be dealt with except urine smells, which are also health and safety issues. Even the closet caused the tenant's clothing to smell. When the tenant had guests, the tenant had to close the bedroom door, and had to sleep on the couch. There was absolutely no effort by the landlord, even on the emergency line.

The tenant claims a rent reduction of \$455.00 and compensation in the amount of \$1,035.00 in addition to recovery of the \$100.00 filing fee.

The landlord's agent testified that the landlord is not aware of calls from the tenant that went unanswered by the landlord. The landlord sent a carpet cleaner and a handyman to the rental unit. The carpet was cleaned on June 8 and again on June 18, 2021.

Analysis

Where a party makes a monetary claim for damage or loss as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, I accept the undisputed testimony of the tenant that due to wearing masks, the smell wasn't noticed during the condition inspection at move-in.

The landlord testified that the landlord doesn't know anything about phone calls that the landlord didn't answer, however, the tenant also sent emails to the landlord about the smell. The parties agree that the landlord sent a carpet cleaning person twice, however neither visit rectified the problem, and the tenant told the landlord that. If a tenant cannot enjoy a rental unit due to the landlord's actions or neglect, rent ought to be reduced.

The tenancy began on June 1, 2021 and I find that it ended on August 31, 2021, although the tenant vacated earlier. Considering that the rental unit contains a bedroom, den and

kitchen and living room and bathroom, I find that the tenant should be compensated one fifth of the rent paid, for a total of \$1,380.00 ($\$2,300.00 / 5 = \$460.00 \times 3 \text{ months} = \$1,380.00$).

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the tenant's application for an order reducing rent for repairs, services or facilities agreed upon but not provided is hereby dismissed without leave to reapply.

The tenant's application for an order that the landlord make repairs to the rental unit or property is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,480.00.

This order is final and binding and may be enforced.

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: November 12, 2021

Residential Tenancy Branch