Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, MNDCT, RP, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for:

- an Order to reduce the rent by $200.00 per month for repairs, services or facilities agreed upon, but not provided;
- a Monetary Order for damage or compensation of $3,473.88 under the Act;
- an Order for repairs to the unit, or property, having contacted the Landlord in writing to make repairs, but they have not been completed;
- an Order for the Landlord to Comply with the Act or tenancy agreement; and
- to recover the $100.00 cost of her Application filing fee.

However, at the onset of the hearing, the Tenant advised that she had moved out of the residential property on September 9, 2021, and that as a result, some of her claims were no longer relevant. The Tenant indicated that she was withdrawing her claims, other than for a Monetary Order of $3,473.88 for compensation under the Act, and to recover the $100.00 cost of her Application filing fee. The Landlord did not express any concerns, and I find there is no prejudice to the Landlord for the Tenant to withdraw these claims in the hearing.

The Tenant, the Landlord [R.], and an agent for the Landlord, G.G. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

In terms of the service of the Tenant's Application for Dispute Resolution and her documentary evidence, the Landlord said she had received these documents from the Tenant and had reviewed them prior to the hearing. However, the Landlord said that she did not serve the Tenant with her documentary evidence. As a result, I find it would be administratively unfair to the Tenant to consider the Landlord's documentary evidence that the Tenant has not seen. Accordingly, I will only consider the Landlord's testimony in the hearing as evidence before me from the Landlord.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of her $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on March 15, 2020, with a monthly rent of $1,200.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $600.00, and no pet damage deposit. They agreed that the Landlord returned the security deposit in full at the end of the tenancy.

Based on the testimony, I find that the Parties' dispute centers around some language written into the tenancy agreement at the bottom of page two, as follows:

> If tenant purchases machine themselves (can take when leaving) installation costs on landlord.

The Parties agreed that this refers to laundry equipment that the Tenant would purchase and provide to the rental unit for her use. The Parties' disagreement centred around whether the infrastructure for the appliances would be built first, or whether the Tenant would provide the machines to the residential property first. In the hearing, the Tenant explained her version of events, as follows:

> When I was negotiating the tenancy agreement, the daughter, [M.], was involved, and [R.]. And so, I made it perfectly clear to them – the only reason I signed the tenancy agreement was that they would put the infrastructure into the house on the basis that I would buy my own washer and dryer. I didn't know them or their history. I needed a place, and we signed, and they signed that they would follow through.

The Tenant then referenced section 7 of the Act. She noted that pursuant to section 7, a party who does not comply with the Act, regulation or tenancy agreement must compensate the other party for the resulting damage or loss.

The Tenant also said:

> I was hopeful that [R.] would negotiate in good faith, but that didn't happen. So, the compensation amount I did is a reasonable amount for my time to put laundry together, get it in the car, drive to the laundry mat – there is not one close – so with that time compensation receipts are there. This has added duress and stress. I sought legal counsel – I was told with those amounts and with mental and physical duress…. What the [Landlords] do not know is that I have two physical disabilities – my right wrist is bone on bone - and secondly, I have a seven-centimetre rip in my left shoulder that I'm still getting treatment for. Any time I lift or move anything causes more stress and tearing on my condition.

The Landlord responded to the Tenant's testimony, as follows:

> We would like to say that on the tenancy agreement, we said would we'd cover the installation cost, once she got them to our house. She was at Best Buy and never decided to go through with giving us the dimensions for the machines to build a counter top and build a little laundry for her.

The Tenant responded:

> That was not my understanding. When we were sitting at the front of the house talking about it – [R.] would come and go from the conversation - so when I said to [M.], their daughter… I have a mediation background, different kinds of credentials. I said let's make sure we're understanding – once I move in, you're going to put in the infrastructure, and then I'll buy the machines. I needed to find a place. That's my bad - I failed to make sure it was written the way we verbally agreed.
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> Second, they did not ask me to how is it going with the purchase, no. Also, I didn't meet anyone at Best Buy.
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> I didn't want to purchase a machine without making sure it would happen right from the get-go. And then Covid started. How I was being treated by [the Landlord]? As soon as I moved in, their fridge didn't work. I put food in there and only charged for what was frozen. She agreed to bring me a cooler, because I couldn't leave the suite. There were some days ….
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> There wasn't follow through and it's been like that. I didn't want to put the expense out without an assurance. When are you going to start with the infrastructure – but she'd say, 'oh I'm sick and . . .'. I made sure with [M.], but that's the way they wrote it.
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> The initial conversation was that they would build it and I would buy it. In fact, [R.] wasn't even present when [M.] and I were talking about that agreement. So according to what is written, no I didn't comply because that was not what was verbally said. I was hoping that they would follow through with what we had agreed.

The Landlord said:

> We made an agreement, and she said she was buying machines, but she did not bring them to the basement. How we can put the machines there?

In her last statements, the Tenant said:

> I've written 3 different letters to [R.], and not once did she speak to me about what's been written on the sheet. She would respond with 'I can't afford it, I'm

> sick…'. There was an understanding that they would put that infrastructure in, and not once did she say it's written this way in their letter of May 26 from them to me. Not once did they follow through with any repairs in the suite. My main reply, 'How come they didn't speak to me about that then?' We've had a whole year and a half to work this out. It's written on the agreement – they didn't say 'when are you going to buy it?' So that's my final statement.

In her last statements, the Landlord said:

> We had two emails going back and forth with her, but we responded to all her issues, and it wasn't just about laundry. If we had visitors – she would say they were looking at her she said . . . she even said I was staring at her. Also, the receipts are from the dry cleaners - she didn't do it herself. It's more pricey at the dry cleaners, if they do it for you.
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> We did text back and forth and we saw that she was never going to buy the machines, so why put the infrastructure in?

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I advised them of how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenant must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenant to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenant did what was reasonable to minimize the damage or loss.

("Test")

The parol evidence rule is a common law rule in contract that prevents a party to a written contract from presenting extrinsic evidence (usually oral) supplementary to a

pre-existing written instrument. The purpose of the parol evidence rule is to prevent a party from introducing evidence of prior oral agreements that occurred before or while the agreement was being reduced to its final form in order to alter the terms of the existing contract. In the hearing, the Tenant said: “No, I didn’t comply, because that was not what was verbally said.” She also said: “That’s my bad - I failed to make sure it was written the way we verbally agreed.”

I appreciate that the Tenant is trying to rely in the discussion she had prior to the tenancy agreement being signed; however, the parol evidence rule prevents her from relying on these discussions as part of the agreement. Further, the Tenant said her discussions were with the Landlord’s daughter, M., who is not a party to the contract. As such, I find that these discussions were not evidence of the Landlord’s intent, but of the Landlord’s daughter’s impression of the situation.

The statement in question in the tenancy agreement is:

> If tenant purchases machine themselves (can take when leaving) installation costs on landlord.

I find that this statement does not clearly indicate which part of the agreement is to occur first - the purchase or the installation. However, I find it is inconsistent with common sense and ordinary human experience that the Landlords would know in what layout to build the infrastructure for the laundry machines, if the Tenant had not given them dimensions of the machines she intended to purchase. I find the difficulty in this situation was that the Tenant did not provide the machines to the residential property, so that the Landlords could build the infrastructure to fit around the machines.

I find that the Tenant has not provided persuasive evidence that the Landlords breached the Act, regulation, or tenancy agreement by not building the laundry infrastructure before the Tenant purchased the appliances. I, therefore, find the Tenant’s Application is without merit, and I dismiss the Tenant’s Application wholly, pursuant to section 62 of the Act.

Conclusion

The Tenant is unsuccessful in her Application, as she failed to provide sufficient evidence to prove her claim on a balance of probabilities. The Tenant’s Application is dismissed wholly without leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 3, 2021

Residential Tenancy Branch