



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, CNC-MT, DRI, RR, OLC, LRE, FFT

Introduction

On August 12, 2021 the Tenants (hereinafter the “Tenant”) applied for dispute resolution requesting the following:

- more time to dispute the One Month Notice to End Tenancy for Cause issued by the Landlord on July 30, 2021;
- compensation for monetary loss or other money owed
- dispute of a rent increase above the amount allowed by law
- a reduction in rent for repairs, services or facilities agreed upon but not provided
- the Landlord’s compliance with the legislation and/or the tenancy agreement
- suspension or set conditions on the Landlord’s right to enter the rental unit or site
- 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 December 17, 2021. The Landlord and their counsel (hereinafter the “Landlord”) as well as the Tenant attended the telephone conference call hearing.

Preliminary Matter – evidence disclosure

The Landlord confirmed they received notice of this hearing and copies of the Tenant’s prepared documentary and digital evidence. While the Tenant raised concern about the Landlord’s counsel returning sent material, I find the Landlord received the materials which is all that is required.

The Landlord provided photos depicting the state of the rental unit prior to the start of the tenancy; however, and the outset they stated there was “no need for the Landlord to rely on evidence.” The Tenant stated they did not receive copies of this material. I stated I would monitor whether the Tenant not having copies would prejudice them in the hearing. I provided that if necessary, the Landlord would have to describe the elements of the photos provided and would have to ensure proper disclosure. The hearing proceeded on this basis. By the end of the hearing, there were no specific reference to the photos and the hearing concluded with a full airing of the issues involved.

Preliminary Matter – notice to end the tenancy

The Landlord issued the One Month Notice to End Tenancy for Cause (the “One-Month Notice”) on July 30, 2021 for the end-of-tenancy date of August 31, 2021. The Tenant did not apply within the initial 10-day-application period stated on the One-Month Notice and asked for more time to do so on their Application. In the hearing, the Tenant confirmed they moved out from the rental unit on October 17, 2021. For this reason, I dismiss the portion of the Tenant’s Application disputing the One-Month Notice and asking for more time in which to do so, without leave to re-apply.

Regarding the Landlord’s right to enter the property and the portion of the Tenant’s Application to set conditions on this, I find this is related to a continuing landlord-tenant relationship which has already ceased. For this reason, I dismiss this portion of the Tenant’s Application without leave to re-apply.

On their Application, the Tenant included their request for the Landlord’s compliance with the *Act*, the regulation, and/or the tenancy agreement. Stated thus on the Application: “[The Landlord has] not complied with the RTB regulations or tenancy lease since April 2017. They continue to ignore and seek jurisdiction outside of the RTB.” I find this is unclear and not specific to any piece of the legislation or the tenancy agreement. Further, the Tenant did not specify what remedy or specific order they seek under this part of their Application. Given the Tenant’s other statements in the hearing, I find it more likely than not the Tenant was seeking a remedy for the correction of the Landlord’s compliance during the tenancy. Because the tenancy has since ended, I dismiss this portion of the Application without leave to reapply.

Issues to be Decided

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

Is the Tenant entitled to a reduction in rent for services/repairs/facilities not provided, pursuant to s. 65 of the *Act*?

Background and Evidence

The Tenant provided a copy of the tenancy agreement and both parties spoke to the terms therein in the hearing. The tenancy started on April 1, 2017. The agreement provides for the rent amount of \$1,500 per month; however, the Tenant indicated \$1,600 on their Application. The Tenant stated they did not sign the agreement initially and the copy they provided has their signature spaces not completed. The Tenant acknowledged entering into a tenancy agreement and were aware of the terms of the agreement.

In the hearing, the Tenant described various repairs not undertaken by the Landlord and referred to videos they made within the rental unit to show the state. They submitted many separate pieces of evidence in document, video, and photograph form. Several pieces of the evidence are text messages between the Tenant and the Landlord and/or third parties.

The Tenant asks for a rent reduction for repairs, services or facilities agreed upon with the Landlord, but not provided. On their Application, they provided this is for “lack of full use of our home and property due to ex tenants/original homeowners belongings, handy man fixes and upgrades that have lead to non use of our master bath shower, garage and storage areas.” The Tenant specified an amount of \$300 for this portion of the claim.

In the hearing, the Tenant described various repairs not undertaken by the Landlord and referred to videos they made within the rental unit to show the state. The Tenant did not refer to specific pieces of evidence in relation to this separate category of their claim for rent reduction.

The Landlord in the hearing stated that the whole house was available to the Tenant at all times during the tenancy.

On their Application, the Tenant requested an amount of \$500, and described an “illegal rent increase, amount and notice of increase via text.” On the Application, the Tenant referred to text messages they provided from/to the Landlord December 2019, January 2020 and March 2021. The messages in the Tenant’s evidence refer to the sale of the property and communication about the possibility of the tenancy ending.

The Tenant also claims compensation for monetary loss or other money owed. In this part of the Application, the Tenant requested the amount of \$30,000. This is

a monetary order in an amount fitting for: loss of use for part of our home and property as outlined in our lease. For infringement on our right to quiet enjoyment of our home For emotional physical distress to and impediments to my mental and physical rehabiliatee for MV PTSD. Illegal rent increase We have no idea how to calculate these values and will put in max allowance to leave it at the arbitrators discretion to set these amounts

In the hearing, on direct question the Tenant replied that they had no idea how to value. They indicated this amount “rather than going through responsibilities for damages, and a lot of turmoil.” The indicated that “neither the Landlord nor the lawyer acted professionally.” The Tenant mentioned water damage in the master bathroom, a yard irrigation system that never worked, a chipping countertop and rotting fence. They cleaned up, painted and “did everything that the Landlord should do” and were not compensated.

In response to this piece of the Tenant’s claim, the Landlord in the hearing stated there is no explanation of the claim and no indication of which parts of the evidence to refer to. The Landlord provided that there was no indication ever from the Tenant of “this is the work we did and this is our receipt” – meaning there was never a clear indication from the Tenant that they had completed work to improve the property or rental unit and expected reimbursement.

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.

When evaluating the Tenant's submission and evidence, I find the amount of \$30,000 is not quantified. That is to say, the amount of \$30,000 is an arbitrary amount, and does not reflect tangible measurable damage. The Tenant does not establish the value of the damage or loss – they did not present impact to finances or personal expenses. Moreover, the Tenant stated in the hearing and provided on their Application that this amount is the “max allowance” and there is no basis for responsibility for damages. This is not a calculated, or even estimated, amount. There is no reference to comparable claims for injury or other distress; therefore, there is no base amount from which to gauge an amount of compensation. As such, the Tenant has not established the value of the damage or loss. The amounts claimed for each of the alleged rent increase and rent reduction are each not quantified.

Further, the Tenant has not proven a violation of the *Act*, regulation, or tenancy agreement such as it exists. I find no breach occurred on the part of the Landlord. Further, there is no proof of high-handed conduct on the part of the Landlord.

In reviewing the Tenant's Application, I find the Tenant did not provide full particulars of their claim for compensation. This is required by s. 59(2)(b) of the *Act*. Pursuant to s. 59(2)(c), I am dismissing each piece of the Application. There is no evidence presented in an organized fashion, and no summary of their claim for compensation. To make any award in this Application would be prejudicial to the Landlord where evidence is not established. It is difficult, if not impossible, for the Landlord to adequately prepare a response to the claim. The monetary claim is not broken down into discrete points; therefore, I am unable to grant monetary compensation for the amounts of each item, and what items they are claiming for.

The Tenant has not provided sufficient detail with clear and organized evidence to prove their eligibility for compensation. They did not provide a full breakdown of particulars, with evidence to verify the amounts.

In the hearing, the Tenant asked for the return of the security deposit and pet damage deposit. I refer the Tenant to the governing s. 38 of the *Act*. This specifies the Landlord must receive the Tenant's forwarding address in writing. The Tenant in the hearing did not specify that they had provided their address to the Landlord, or when they did so. I make no award for their return here, with insufficient evidence, and lack of particulars.

For the reasons outlined above, I find the Tenant has not presented a preponderance of evidence to show on a balance of probabilities that they are entitled to compensation for damages or loss that is the responsibility of the Landlord. Because they were not successful in their claim, the Tenant is not entitled to return of the Application filing fee.

Conclusion

For the reasons above, I dismiss the Tenant's Application, without leave to reapply.

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: December 20, 2021

Residential Tenancy Branch