



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, LAT, AAT, OLC

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not 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 provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an

opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. 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.

Preliminary Issue – End of Tenancy

At the outset of the hearing, the parties had a brief discussion and agreed that the tenancy could end on this day; February 17, 2022 at 5:00 p.m. Both parties agreed to and confirmed this, accordingly; I grant the landlord an order of possession to reflect that agreement. In addition, the parties also agreed that all other issues could be dismissed save and except the tenant's monetary claim. The hearing proceeded and completed on that basis.

Issue(s) to be Decided

Is the tenant entitled to a monetary order as compensation for loss or damage under the Act, regulation or tenancy agreement?

Background and Evidence

The tenant gave the following testimony. The tenant testified that the tenancy began on October 1, 2011. The monthly rent of \$570.35 is due on the first of each month. The tenant testified that she had a good relationship with the landlord up until about a year ago. The tenant testified that the landlord became very intimidating and harassing when she challenged a notice to end tenancy. The tenant summarized the issue as follows as noted on her application:

“Due to the ongoing harassment and intimidation by the landlord, the tenant felt compelled to start moving her belongings into storage and pay a friend for temporary access to accommodation in the event the arbitrator did not find in her favour. The tenant purchased several boxes and totes, paid people to help her move, gave the friend money for short term accommodation, and had to move her mail, as the landlord has withheld important documents such as her Census form and numerous bills.”

The tenant testified that she is seeking the return of rent paid from November 2021 to February 2022 in the amount of \$2281.40.

Counsel for the landlord gave the following submissions. Counsel submits that the allegations made by the witnesses and the tenant are false. Counsel submits that the landlord has not had contact with the tenant since April 2021. Counsel submits that the witnesses and the tenant have referred to events that are either; dated, irrelevant, or have no evidentiary weight regarding the tenant's monetary order. Counsel submits that the tenant has provided "zero" proof that she should be awarded the amount sought. Counsel submits that the chicken coop is a 25-year-old structure that belongs to the landlord that was dismantled due to health and safety reasons and simply because it was rotting and no longer useful. Counsel submits that the tenant has failed to establish her claim and that the matter should be dismissed.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the tenants claim and my findings as follows.

The tenant and her witnesses spoke for forty-five of the sixty-minute hearing. However, much of that time was spent on dated and nonrelated issues. The witnesses provided vague, disjointed and at times confusing testimony as to the context and chronology of events and lacked clarity and conciseness. The tenant stated that she wanted the rent

she paid for November 2021 to today's date returned to her. The tenant stated that she didn't feel comfortable living in the unit any longer and decided to put her things in storage yet continued to pay the rent. The tenant now wishes for that rent to be returned to her. I find her position illogical and without sufficient merit. The tenant knowingly and willingly decided not to live in the unit and has failed to show sufficient evidence to the contrary.

Although the tenant was given most of the time in the hearing to explain her claim and as to the reasons why she should be entitled to the money, she focused on issues that related more with a previous notice given to her and a previous hearing. Based on the insufficient evidence, and the tenant's inability to satisfy the four elements listed above to be granted a monetary order, I hereby dismiss this application in its entirety.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply. The landlord is granted an order of possession.

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: February 17, 2022

Residential Tenancy Branch