



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASA MIA APARTMENTS & TRIBE
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, RR, LAT, LRE, OLC, MNDCT, FFT

Introduction

On December 2, 2021, the Tenant made an Application for Dispute Resolution seeking a repair Order pursuant to Section 32 of the *Residential Tenancy Act* (the “Act”), seeking a rent reduction pursuant to Section 65 of the *Act*, seeking authorization to change the locks pursuant to Section 31 of the *Act*, seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. R.M., V.N., and T.C. attended the hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could 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 in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing and evidence package to the Landlord by putting it in the office door on December 8, 2021. R.M. confirmed that she received this package and that she could view the Tenant’s digital evidence. The Tenant advised that he served additional evidence to the Landlord in the same manner as above on March 5, 2022. R.M. confirmed that she received this; however, she was not able to respond as this evidence was served late. Based on this undisputed

testimony, I am satisfied that the Landlord was sufficiently served the Tenant's Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision. However, as the Tenant's additional evidence was served late contrary to the timeframe requirements of Rule 3.14 of the Rules of Procedure (the "Rules"), this evidence will be excluded and not considered when rendering this Decision.

R.M. advised that the Landlord's evidence was served to the Tenant by hand on March 7, 2021, and the Tenants confirmed that he received this evidence. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. The Tenant was notified that the hearing was scheduled for one hour and it would not be feasible to address all of the issues claimed in this Application. As such, he was directed to choose the most pressing issue that required remedy. As well, he was advised that his other claims would be dismissed with leave to reapply.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. 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.

Issue(s) to be Decided

- Is the Tenant entitled to a repair Order?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on March 1, 2018, that rent was established at \$1,558.00 per month, and that it was due on the first day of each month. A security deposit of \$750.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

As noted above, the Tenant was directed to identify the one issue that was a priority, requiring immediate attention. He spent the next 20-plus minutes making submissions on a repair request, only to acknowledge afterwards that the Landlord had corrected this issue already, rendering this repair request a moot point. Given that we had already commenced the hearing, the Tenant was provided with an additional opportunity to make submissions regarding a different repair request. This was afforded to him for his benefit, and as a means to allow him a fair opportunity to seek remedy for one issue that he had applied for.

The Tenant then advised that he informed the Landlord verbally in 2018 that he had an issue with two bedroom windows; however, the Landlord replaced one bedroom window in January 2019. He stated that he notified the Landlord in writing of this continued problem on May 29, 2021 and that the Landlord hired a company to do “basic repairs” to the window. When he asked this company if these measures would fix the condensation issue, they informed him that it would not.

He submitted that there was a very high level of condensation and moisture around these windows, leading to the development of mould in the rental unit. He testified that an agent of the Landlord inspected the property in July 2021 and stated that the two bedroom windows needed to be replaced. He advised that the Landlord conducted another inspection in January 2022, and he informed them that the windows were moving, to which the Landlord stated that a window company would be dispatched to investigate. He stated that a different window company attended the rental unit and indicated that there was nothing wrong with the windows and that they did not know what to repair.

It should be noted that the Tenant submitted an enormous amount of documentary and digital evidence. So much so that he had difficulties navigating his own evidence, and he struggled to point me directly to the evidence that he wanted me to consider in supporting his submissions. In fact, the Tenant would often mistakenly reference the Landlord’s evidence as his own, or vice versa, when attempting to direct me to salient, supporting documents.

R.M. advised that the Landlord would dispatch contractors whenever the Tenant would raise an issue with respect to potential repairs. She stated that the Landlord had a window company investigate the nature of the Tenant's complaints and took steps to fix the windows; however, there was no water infiltration or condensation detected. She referenced an invoice dated August 26, 2021 to support this position. She confirmed that the Landlord's contractor attended the rental unit in July 2021 and no moisture was reported, nor were any issues reported with these windows.

She confirmed that the Tenant showed the window moving in January 2022 and a glass company was dispatched to investigate this issue. This company reported that there were no problems with the windows and that the buildup of moisture was due to how hot the Tenant kept the rental unit. She referenced documentary evidence submitted to support the Landlord's position.

The Tenant referenced a mould inspection report, submitted as documentary evidence, that he commissioned, which indicated that the humidity level detected in the rental unit was "optimal".

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 32 of the *Act* requires that the Landlord provide and maintain residential property in a state of decoration and repair that "complies with the health, safety and housing standards required by law" and "having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant."

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In addition, given the contradictory testimony and positions of the parties, it is possible that I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, I am not satisfied that the Tenant has submitted persuasive or compelling evidence that there was a continuing issue with the two bedroom windows that would have caused an infiltration of moisture or condensation in the rental unit. I find that I prefer the Landlord's evidence that professional window companies had been called to investigate the nature of the Tenant's complaints and that their assessment of the condition of the windows carries more weight, on a balance of probabilities. As a result, I dismiss the Tenant's request for the above-mentioned repair Order as this has not been substantiated as necessary under Section 32 of the *Act*.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

As I am not satisfied of the Tenant's claims, I dismiss the Tenant's Application, with respect to the specific claim for repairs that was addressed above, in its entirety. As noted earlier, the Tenant's other claims have been severed, and the Tenant is at liberty to reapply on a separate Application.

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: March 22, 2022

Residential Tenancy Branch