



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant's application originally included cancellation of a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49. That issue was dealt with in a previous hearing under the file number on the first page of this decision on February 2, 2022.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents with agent JH primarily speaking (the "landlord"). The tenant KD (the "tenant") primarily spoke and they were assisted by a health professional who was also called to give sworn witness testimony.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord corrected the name of the corporate landlord identified in the application. The corrected name is used in the style of cause for this decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

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 claim and my findings around each are set out below.

The tenant testified that they took possession of the rental unit in August, 2003. They were removed from the property with the assistance of court bailiffs in accordance with an Order of Possession issued as a result of the previous hearing on February 2, 2022.

The tenant gave lengthy testimony spanning most of the 45-minute hearing complaining about the history of their tenancy, the condition of the rental unit, their attempts to have the landlord address deficiencies, and the impact of water ingress into the rental unit. The tenant complained about flooding in the basement of the rental property, their inability to use much of the unit due to the water damage, negative health effects and damage to personal possessions.

The documentary evidence submitted by the tenants consists of several pages of hand-written submissions which was reiterated in their oral testimonies, two identical copies of a Notice of Entry from the landlord dated May 19, 2021 and a copy of a tenant ledger showing rent owing and payments made. The tenant also submitted a copy of the 2 Month Notice which was dealt with in the earlier hearing and the Landlord's Proof of Service of that Notice.

Included in their documentary evidence is a hand-written letter requesting the date of the present hearing be changed. The tenant was given a full opportunity to make a request for an adjournment of the proceedings or request additional time to prepare additional evidence but chose not to do so and proceeded with their application.

Analysis

Residential Tenancy Rule of Procedure 2.5 provides that an application should submit with their application copies of all documentary evidence to be relied on in the proceeding.

The tenants made some reference to documentary evidence being unavailable due to their being removed from the rental unit in accordance with the Order of Possession. I note that the present application by the tenants seeking a monetary award was filed with the Branch on December 13, 2021, 2 months before the issuance of the Order of Possession on February 2, 2022. I find no reason why the tenants would not have had access to their own documentary evidence given that they filed their application well before the issuance of the Order of Possession.

I further note that while the tenant's documentary evidence contains reference to seeking the present hearing be rescheduled the tenant made no request at the hearing, indicated that they were prepared to proceed and were given a full opportunity to make submissions.

Based on the foregoing, I find no basis to adjourn the hearing. Both parties indicated they were prepared to proceed and I find any need for additional time to provide documentary evidence is a result of the failure of the applicant tenants to prepare and submit all materials at the time of filing their application in accordance with the Rules. I find no issues of procedural fairness or the principles of natural justice and proceeded with this hearing.

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find the tenants have not met their evidentiary onus and have not established any portion of their claim on a balance of probabilities. I find that the testimonies of the

tenants and their health professional is insufficient to establish that there has been any breach on the part of the landlord giving rise to the basis for a monetary award.

If there were ongoing issues with the condition of the rental unit it would be reasonable to expect that there would have been some written correspondence documenting the complaints of the tenants or a photograph showing the deficiency. The tenants provided no documentary evidence to demonstrate that there were issues with the rental unit communicated to the landlord. The tenant made reference to attempts to have the landlord make repairs but provided no details of these communications and no documentary evidence to support their vague claims. I find the submission of the tenants that there was major flooding issues in the rental unit for the length of their tenancy, approximately 20 years, which were not properly addressed to have little air of reality.

I find the oral testimony of the tenants and their health worker to be insufficient to establish that there were deficiencies as claimed. I find the submission of detrimental health effects and loss of valuables to not be supported in any documentary materials. Taken in its entirety I find that the tenants have not demonstrated that there has been any breach on the part of the landlord that has resulted in damages or loss such that a monetary award is appropriate. Accordingly, I dismiss the tenants' claim in its entirety without leave to reapply.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

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 1, 2022

Residential Tenancy Branch