



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EMV HOLDINGS CORP. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDCT, RP, LRE

Introduction

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

- 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 the landlord to make repairs to the rental unit pursuant to section 32; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit 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.

In addition to the above, both parties attended the hearing on the first scheduled day on January 25, 2022. The matter was adjourned to today's date as the landlord had not had a chance to make final submissions. The landlords agent and counsel participated in the teleconference, the tenant did not. Both parties were issued a Notice of Hearing to reconvene on this date by the Branch. I have reviewed the file and note that both parties were issued the same letter with today's date, time and passcode, accordingly; the hearing proceeded and completed on this date as I am satisfied that both parties were notified.

Issue(s) to be Decided

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

Is the tenant entitled to an order to have the landlord repair the suite?

Is the tenant entitled to an order to have the landlord comply with the Act, regulation, or tenancy agreement?

Should the landlords right to enter the unit be suspended or have conditions imposed?

Background and Evidence

The tenant gave the following testimony. The tenant is seeking \$2550.00 for "the noise". The tenant testified that she is a light sleeper and that there is incessant noise throughout the night that disturbs her. The tenant testified that the landlords told her that a white noise machine was the only solution and that no repairs could be done. The tenant testified that there is a rodent problem in the suite and building that has not been addressed.

RP gave the following testimony on behalf of the landlord. RP testified that the tenant's application should be dismissed. RP testified that her claims lack any merit. RP testified that she is using this process as retribution for the landlord issuing a One Month Notice to End Tenancy for Cause. RP testified that the noise she complains of are non-existent.

RP testified that there is no rodent infestation and that she's failed to show him proof of such. RP testified that the tenant has been problematic since the first day of her tenancy and that she now seeks a financial benefit at the cost of the landlord.

RP testified that if any issues arose, he would address them quickly. RP testified that the repairs she alluded to was one screw on a hinge for a cabinet door. RP testified that during COVID, safety is paramount and only high priority emergency repairs are conducted. RP testified that one screw on the cabinet hinge was not an emergency. RP testified that the tenants claim should be dismissed in its entirety.

Counsel for the landlord provided extensive and detailed submissions that addressed each of the tenant's issues. Counsel submits that the tenant failed to meet the burden of proof to prove any of the claims that she put forward. Counsel submits that due to insufficient evidence, the entirety of the tenant's application should be dismissed.

Analysis

Although the tenant did not participate in the second day of the hearing, she had been given a full opportunity to present her claim and make submissions on the first day and I have addressed them below.

Legislation and Rules

During the hearing, I notified both parties that as the tenant is the applicant, she is required to present her application and prove their claims on balance of probabilities.

The following RTB *Rules of Procedure* state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the tenant did not properly present their evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity to do so during the hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*. During the hearing, the tenant failed to properly go through all their specific claims, the amounts for each claim, and their documents. The hearing lasted 90 minutes, so she had ample opportunity to present her claim.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the respondent in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

The tenant failed to provide sufficient or relevant testimony during this hearing, regarding the tenant's request to suspend or set conditions, an order to have the landlord conduct repairs to the suite, an order to have the landlord comply with the *Act*, regulation or tenancy agreement and the landlords right to enter the suite, accordingly; these claims are dismissed without leave to reapply.

The tenant's application for a monetary order of \$2,550.00, is dismissed without leave to reapply. The above amount was taken from the tenant's online application. The tenant failed to provide a breakdown of their monetary claim, aside from stating that the tenant wanted money. The tenant failed to go through any of her documentary evidence during this hearing, including any photographs, invoices, receipts, or estimates. She did not even indicate how she came up with the calculation she submitted.

She generally referenced documents, but did not indicate any details, and she did not point me to any specific documents, provisions, pages, or other information. I asked the tenant repeated questions during the hearing about her claims and documents, but she still failed to go through same, she would instead explain some unrelated and irrelevant issues instead of focusing on the claim before me. Finally, despite my numerous attempts to have the tenant explain her application and what she was seeking, she continually offered illogical and contradictory answers. As a result, the monetary portion of her application is dismissed without leave to reapply.

Conclusion

The tenant's 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: May 17, 2022

Residential Tenancy Branch