Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAXIMUM INCOME PROPERTY MANAGEMENT CORP. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, RR, PSF, FFT

Introduction

On March 21, 2022, the Tenant applied for a Dispute Resolution proceeding 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 the provision of services or facilities pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, with A.S. attending as an advocate for the Tenant. D.M. attended the hearing as an agent 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. As well, all in attendance provided a solemn affirmation.

Prior to the hearing commencing, D.M. requested that the hearing be adjourned as the he represented the property management company, and the owner of the property was not named as a Respondent on the Application. I find it important to note that the property management company was listed on the tenancy agreement as the Landlord, and that this agreement was signed by D.M. Moreover, the Tenant advised that he was never provided with the contact information for the owner of the rental unit. As such, I was satisfied that the property management company is considered the Landlord as defined by the *Act*, and that this company was correctly named as the Respondent on

this Application. Should there be a dispute between the Landlord and the owner of the rental unit, that would be a matter that would need to be addressed outside of the jurisdiction of the Residential Tenancy Branch.

The Tenant advised that he served the Notice of Hearing and evidence package to the Landlord by Xpresspost on March 24, 2022, and D.M. confirmed receipt of this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

D.M. advised that the Landlord's evidence was served to the Tenant by placing it in his mailbox over ten days prior to the hearing. The Tenant confirmed that he received this package on May 5, 2022. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

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 advised that the hearing was scheduled for an hour, and he was informed that every issue on the Application could not be addressed in this hearing. As such, he was informed that he must choose the most pressing issue to be addressed, and the other claims will be dismissed with leave to reapply. After much deliberation, the Tenant advised that his request for monetary compensation was the most significant issue. Consequently, this hearing primarily addressed the Tenant's Application with respect to a request for compensation, and the other claims were dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

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 Monetary Order for compensation?

- 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 July 1, 2020, that the rent was established at $3,500.00 per month, and that it was due on the first day of each month. However, it appears as if rent has been increased to $3,552.50 as of January 1, 2022. A security deposit of $1,750.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Tenant advised that he is seeking compensation in the amount of **$11,917.84**, which is calculated as $603.92 per month from July 1, 2020 to March 1, 2022. He submitted that this was due to a loss of 17% of the total square footage of the rental unit. He stated that he was provided with a sunroom, including a hot tub; however, there was a leak in the sunroom at the start of the tenancy, which caused the floors to become rotten. As well, the hot tub was dirty and was unusable, but it was finally fixed and made suitable for use on May 1, 2022.

He submitted that the main roof was leaking at the start of the tenancy as well, and he brought all of these issues to the Landlord's attention, within 60 days of the start of the tenancy, by email, text, and phone. He stated that the Landlord informed the owner of the property about these issues; however, the owner did not care. He testified that no action was taken until a handyman was sent out approximately seven months later, and the main roof was fixed in September 2021. He stated that he was never provided with the owner's contact information.

Regarding the sunroom, he submitted that he went to the municipality in October 2021, and an inspector was sent to the rental unit. The municipality issued an Order to the Landlord in November 2021 to correct the deficiencies in the sunroom flooring. He referenced the report submitted as documentary evidence to support the position that a problem with the roof and flooring in this area was noted. While the flooring issue was corrected in February 2022, he stated that the roof is still leaking.

It should be noted that during the Tenant's testimony, D.M. would interject and interrupt. The hearing was paused, and the parties were reminded not to interrupt, to make a note of any concerns, and that the parties would have an opportunity to address these concerns when it was their turn. The parties acknowledged this; however, D.M. continued to act in an inappropriate manner. As such, he was muted from participating in the hearing until it was his turn to make submissions.

D.M. initially advised that the sunroom was not part of the tenancy, and that this area was not as large as the Tenant claimed. Moreover, he submitted that the Tenant did not provide any documentary evidence to support the size of the area that he was claiming as a loss. He then contradictorily stated that this sunroom was included as part of the tenancy and that it was an enclosed deck with a glass ceiling. He confirmed that the Tenant informed him of the roof leak, so he sent a handyman to seal the leak on September 29, 2020. However, the Tenant complained six or seven more times as the roof would continue to leak. Each time, the handyman would be sent to re-seal the roof, but it would leak again.

He acknowledged that the municipality determined that there was an issue with the flooring in this sunroom, and he stated that the flooring and roof have been fixed as of February 2022. He submitted that it is the owner's belief that any water that is present in this room now is due to the Tenant's negligence.

Regarding the hot tub, he advised that this was included as part of the tenancy and that it was fully functioning at the start, but it was not filled with water. It is his position that the Tenant chose not to use the hot tub. He referenced an invoice submitted as documentary evidence to demonstrate that he paid to have this hot tub cleaned on April 30, 2022.

The Tenant advised that he informed the Landlord that the hot tub was not useable as it was full of rat feces. As well, as he was not an electrician, he claimed that he requested that the Landlord hire a certified professional to start up the hot tub.

D.M advised that the Tenant did not submit any documentary evidence that there was rat feces in the hot tub or that the Landlord would not get the hot tub fixed.

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."

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

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. Given the contradictory testimony and positions of the parties, I may also need to 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.

With respect to the Tenant's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?

- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

When reviewing the totality of the evidence before me, as the burden was on the Tenant to substantiate these claims, I note that the Tenant was disorganized and unable to directly point me to the documentary evidence that would have supported all of his submissions. As an aside, I am not able to go through the parties' documentary evidence to make their cases for them.

However, given what was submitted by the parties, I am satisfied that the consistent evidence is that this sunroom and hot tub were included as part of the tenancy agreement, that the Tenant informed the Landlord that there was a problem, and that the existence of the problem with the sunroom was corroborated by the municipality ordering the owner to have it repaired. Moreover, I find it more likely than not that there was a problem with the hot tub at the start of the tenancy, otherwise it is not clear why the Landlord would have paid to have it cleaned and serviced on April 30, 2022.

As such, I find that two of the elements of the four-part test have been satisfied. However, I do not find that the Tenant has adequately corroborated the size of the area that was lost as he has different calculations of this area in his November 4, 2021 and February 9, 2022 emails. Moreover, given that there were these issues since the start of the tenancy, the Tenant could have applied for Dispute Resolution to have the Landlord Ordered to make these repairs. I do not find that the Tenant could reasonably request compensation for a period from so long ago, as this loss could have potentially been minimized by the Tenant through Dispute Resolution.

As such, I find that the total amount of compensation being sought by the Tenant is disproportionate, and I reject this amount as I am not satisfied that it represents a reasonable estimation of the Tenant's losses for those breaches. In assessing the amount of compensation that is commensurate with the loss corroborated by the Tenant, I find that an award for the months of October, November, and December 2021, and January and February 2022 would be appropriate as this appears to have been approximately the period of time where the issue of repairs were initiated and ordered through the municipality, and then completed.

As there does not appear to be any sufficient evidence to indicate the size of the area that has been lost, I accept the Tenant's November 4, 2021 estimate of this sunroom being 14% of the total area of the rental unit. As such, I grant the Tenant a monetary

award totalling **$2,464.70**. This is calculated as $3,500.00 X .14 X 3 = $1,470.00 + $3,552.50 X .14 X 2 = $994.70.

As the Tenant was partially successful in these claims, I find that the Tenant is entitled to recover the $100.00 filing fee paid for this Application.

Conclusion

As the Tenant was partially successful in this Application, I allow the Tenant to recover the $2,464.70 and the $100.00 filing fee, totalling **$2,564.70**, by deducting it from the next month's rent or otherwise recovering it from the Landlord.

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: June 11, 2022

Residential Tenancy Branch