



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for February 11, 2022.

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

As the parties were in attendance I confirmed that there were no issues with service of the application for dispute resolution ('application'). In accordance with sections 88 and 89 of the *Act*, I find that the respondent duly served with the application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Preliminary Issue-Do I have Jurisdiction To Deal With This Matter?

The respondent argued that there was no tenancy agreement, and that the applicant in this dispute was an employee who was provided an office to use as part of their employment. The respondent argued that they applicant had made unauthorized changes in order to reside there without permission of the respondent, and denies ever receiving any rent for the space. The respondent testified that they were only doing a favour as an employee, and denies a landlord/tenant relationship was even in place.

The applicant testified that the respondent had allowed the applicant to reside in one of the offices for \$750.00 per month as of January 2020. The applicant notes that although rent stayed the same, they received a raise in July of 2020, and the amount owed was adjusted to offset the \$350.00 in additional pay per month. The applicant states that a locked washroom was provided for the applicant's own use, and that the respondent

had allowed them to make the space livable. The applicant testified that the contractor they used was the respondent's own friend, and that the respondent's testimony about their ignorance of the renovations was false as the contractor had attended from 11:00 a.m. To 3:00-4:00 p.m. daily for approximately two weeks to perform the renovations. Counsel for the tenant argued that there was no way that the respondent had no idea that alterations were made to the space. Counsel for the tenant notes that photos of the space was submitted in evidence to support that the applicant had resided outside of their employment hours, and used the space for personal use.

The applicant submitted bank receipts to show transactions of \$750.00 and subsequently \$400.00 which was used to pay the rent. The applicant states that the respondent never provided any receipts.

Analysis

The definition of a "tenancy agreement" is outlined in the following terms in section 1 of the Act:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

A tenancy can exist in the absence of a written tenancy agreement. In light of the evidence before me, I find that the applicant was provided exclusive use of a private space and bathroom in exchange for \$750.00 per month. I find that the applicant had provided evidence to support that they had occupied this space starting in January 2020, and that they had made withdrawals every month from their bank account which support their testimony that monthly rent was set at \$750.00 per month.

I find that the applicant had provided evidence to show that the space was not simply used as an office, but one for living accommodation.

Although no written tenancy agreement exists, I find that rent was paid on a monthly basis in exchange for the applicant's right to occupy a space. Whether this occupancy was legal or not, I find that the photos and evidence clearly show that this space was altered to allow the applicant to use the space as a residence rather than commercial space. Based on the evidence before me, I find that a tenancy agreement did exist between the parties, and I therefore have jurisdiction to deal with this matter.

Preliminary Issue– Clarification of the Tenant's Claims

In the Interim Decision dated February 11, 2022, I had ordered that the matter was adjourned strictly for the purpose of allowing the applicant to reserve the respondent with their evidentiary materials. I had also noted that the applicant had failed to submit

any proper amendments for their claims, and accordingly only their original claim totalling \$2,500.00 would be considered.

In that same Interim Decision I had ordered that the applicant submit a detailed monetary order worksheet for their \$2,500.00 claim. I note that the tenant's counsel had submitted a Monetary Order worksheet as ordered dated February 18, 2002 which stated a total monetary claim of \$2,500.00. Upon closer review of the monetary order worksheet, I note that the sum of the amounts listed on the monetary order worksheet exceed \$2,500.00. The issue was clarified with the tenant's counsel during the hearing.

Counsel for the tenant stated that despite the individual amounts listed, they were seeking the maximum claim of \$2,500.00. The hearing proceeded as scheduled, and the parties were informed that the maximum monetary award if granted would not exceed \$2,500.00.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The tenant testified that their employer, the respondent in this application, had offered them the use of an office as living space at their place of employment for \$750.00 per month. The tenant testified that they were given keys to use a private washroom on site, and were also told that they could do whatever they needed to make the place livable. The tenant testified that their landlord had requested that all rent payments be made in cash, and that no receipts were issued. The tenant testified that the landlord had promised to reimburse the tenant for the work and materials later. The tenant testified that the renovations took about two weeks, with the work being performed by a friend of the landlord's. The tenant testified that there was no way that the landlord was unaware of the work as the tenant did not conceal the work being done, which was being completed during the day. The tenant testified that they had lived there from January 1, 2020 to January 31, 2021, and that their bank statements show withdrawals of \$750.00, and then \$400.00 when they received a raise, reducing the amount of cash that needed to be paid.

The tenant argued that there was a mutual agreement that the landlord would reimburse the tenant for expenses incurred by the tenant to make the space livable, but the landlord did not. The tenant provided receipts and a breakdown of the amounts paid for materials, as well as the \$3,600.00 paid for labour. The tenant testified that \$600.00 was paid directly to the contractor, while \$3,000.00 was paid to the contractor through the landlord. In addition to reimbursement of the expenses, the tenant is also seeking

an additional \$1,000.00 in compensation for the lack of quiet enjoyment due to the use of pesticides and unpleasant environment which included unpleasant sewage odours, and living in an unsuitable and cold environment. The tenant testified that they suffered gastritis and intestinal inflammation due to these issues, and the stress of living under these conditions.

The landlord denies that there was ever an agreement made to reimburse the tenant, and denies that a tenancy was even in place. The landlord testified that this was strictly an employer-employee relationship, and that they were unaware of the alterations made by the tenant. The landlord testified that upon discovering the changes made, the landlord took immediate action in December 2020 to have the tenant vacate the space. The landlord expressed concern about the risk to their business and over four million dollars of inventory. The landlord argued that the space was strictly commercial space, and that they had provided the tenant with an office as a favour. The landlord testified that they suffered considerable expenses to remove and restore the space back to regular use after the tenant vacated the premises.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I have considered the written and oral submissions of both parties, and while I am satisfied that the tenant had clearly established that they had occupied the space in exchange for monthly rent, the tenant must still support their claims.

Although it is obvious that alterations were made to the space to make the office space more liveable for the tenant, I do not find that the tenant's claims that the landlord had agreed to reimburse the tenant to be supported in evidence. As noted above, the burden falls on the claimant to support their claims. In this case, the tenant's evidence falls short. I am not satisfied that the tenant had provided sufficient evidence to support that there was an agreement made between the parties which state that the landlord would reimburse the tenant, in part or in full, for the changes made to the space. Accordingly, I dismiss the tenant's claims for reimbursement of the materials and labour paid by the tenant for the changes made.

The tenant also filed a monetary claim of \$1,000.00 for loss of quiet enjoyment due to the living conditions of the rental unit. I accept the evidence of the tenant that they had suffered much distress during this tenancy. The onus is on the tenant, however, to support how the actions of the landlord constitute a contravention of the *Act*, and furthermore, how this contravention has caused the tenant to suffer a loss in the amount claimed. As noted in the tenant's own testimony, the landlord had allowed the tenant to make alterations to make the space livable, which the tenant did undertake. As noted by both parties, the space was not originally intended for residential use, which I find that the tenant was aware of due to the amount of alterations needed. I find that tenant's own testimony supports the landlord's willingness to accommodate the tenant's desire to make the space more liveable despite the fact that this space was originally an office.

I also note the tenant's concerns that their health was affected by the living conditions, which included the use of pesticides, and the less than ideal climate and temperature for occupancy. In consideration of the evidence before me, I am not satisfied that the tenant had provided sufficient evidence to support that their health was affected by

these issues. As noted above, the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. Lastly, I find that the tenant failed to support how they had calculated the amount of loss claimed, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or documents of similar nature to support the losses the tenant is seeking in this application. Furthermore, I find that the tenant failed to establish how their suffering was due to the deliberate or negligent act or omission of the landlord. For all these reasons, I dismiss the tenant's monetary claim for loss of quiet enjoyment and monetary damages without leave to reapply.

Conclusion

The tenant's entire application is dismissed 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: June 8, 2022

Residential Tenancy Branch