



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKVIEW APARTMENTS
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied on October 27, 2021, for compensation for a monetary loss or other money owed.

The tenant, the tenant's advocate, a witness for the tenant, and the landlord's agent attended, the hearing process was explained to the parties, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed. The witness was excused at the beginning of the hearing.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch(RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation from the landlord?

Background and Evidence

The tenancy started on December 1, 2017 and ended on October 31, 2019. The monthly rent at the end of the tenancy was \$945.

The tenant's monetary claim is \$2,147.50. In their application, the tenant wrote the following:

I request compensation of 1/10 of my rent for the 23 months when the service of heat wasn't provided, or 92.50 a month for the first 13 months when my rent was \$925 (subtotal \$1202.50) and 94.50 a month for the final 10 months (subtotal \$945), with a total amount of 2147.50. There was no heat in my unit for the entire tenancy, which I brought to the landlord's attention. A friend who visited me confirmed observing the lack of heat in the unit. Heat was included in the tenancy agreement.

To support their application, the tenant's advocate (advocate) questioned the tenant.

The responses include the following:

The tenant noticed a heating issue within a week of the start of the tenancy. Heating was provided as part of the tenancy agreement. The tenant could not speak to the number of times that they contacted the landlord about the heating, but recalled the agent tried to fix the heating a number of times. The tenant felt intimidated and did not know their rights.

The tenant had to move into the living room due to the lack of heat in the other parts of the rental unit. The heater on the right side of the living room was broken and that sometimes the heat came from the back of the couch.

That one heater was not working at all, and when the agent fixed the heater, it would sometimes only last a few days. The tenant had to wear winter clothing inside the rental unit, as of the first winter in the rental unit.

The tenant purchased a space heater to help keep warm, which increased their hydro consumption. The tenant did not have guests over due to the heating issue, and the only guest to come over was the witness, MD.

In response to my inquiry, the tenant confirmed that they did not provide written requests for repair to the landlord because they did not want to lose their subsidized housing.

Tenant's witness –

The advocate questioned the witness. The responses include the following:

The witness visited the tenant often in her rental unit, beginning in 2017. At first, the witness came over as a friend, but later on discovered the tenant had many needs. The witness always wore a jacket inside the rental unit, and said it was not as cold in the summer months. One part of the rental unit was worse than other parts.

The manager was constantly being contacted about the heating issue and as far as they could recall, there was never any heat in the rental unit until the tenant bought a space heater.

Landlord's agent –

The agent said that there was no evidence supporting the heating issue. The agent said they went over a few times and bled the lines, as the heating system was water-based.

The agent said the tenant was a heavy smoker and she had windows open in the rental unit.

The agent said that the heating system in the building was turned off in May or June each year, for the summer months, and turned on in October of each year. The agent recalled receiving a few calls, when they attended and bled the lines, the water coming out was steaming hot.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

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

Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party.

Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

The claiming party, the tenant in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

As to the claim by the tenant for compensation for a loss of heat, which I find amounts to a loss of value of the tenancy, I considered whether the tenant did whatever was reasonable to minimize the damage or losses, as required by Act. I find they did not.

I find a reasonable way to minimize a claimed loss is to take immediate steps to make the claim. In this case, the tenant said there was no heat for the entire tenancy, which began on December 1, 2017, and ended on October 31, 2019. The tenant did not make their application for compensation until nearly two full years after the tenancy ended. Further, the tenant confirmed not providing the landlord with written requests dealing with the heating issue during the tenancy.

I find by not bringing this claim in a timely manner after noticing the issue allowed the claim to build and grow.

On this basis, I find the tenant failed to mitigate their loss as required by section 7(2) of the Act as it is unreasonable to wait until the tenancy was over and then another almost two years after that to take any appropriate steps.

Due to this delay, I find the legal doctrine of “waiver” applies here, as I find the tenant’s clear intention was to forgo the exercise of their contractual right under the tenancy agreement.

I therefore find the tenant submitted insufficient evidence to meet their burden of proof, and as a result, I dismiss the tenant’s application, without leave to reapply.

Conclusion

The tenant’s application is dismissed, without leave to reapply, due to insufficient evidence.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 5, 2022

Residential Tenancy Branch