Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. A Monetary Order for the cost of emergency repairs - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Parties confirm that Tenant HY is not a tenant named on the tenancy agreement. As such any monetary order that may be granted will not include Tenant HY.

The Tenant states that their application, notice of hearing and all evidence was provided to the Landlord by mail to the Landlord's address as set out in the application. The Landlord states that they only have a copy of an email and did not receive any other evidence. The Landlord states that while they have access to the mail at that address the Landlord could not take the mail as it belongs to the owner. The Landlord confirms that that owner is named as landlord in the tenancy agreement. The Landlord confirms that they have acted for the owner over the tenancy. The Landlord states that the owner had a death in the family and could not attend the hearing. The Landlord provides a letter of authorization from the owner to represent the owner for the hearing. The Landlord states that they do not have a copy of an invoice referenced by the

Tenant at the hearing. It is noted that the Landlord provided evidence in response to the Tenant's claims.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure provides that at the hearing the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that the respondent was served with all the evidence that the applicant intends to rely on at the hearing. There is no evidence to dispute that the Tenant sent their application and notice of hearing to the Landlord. The Landlord's evidence that they did not receive any evidence due to not being able to collect the mail is inconsistent with their evidence that they collected the mail containing the application. The Landlord's evidence in relation to not having permission to collect the mail is confusing. I therefore prefer the Tenant's evidence and find on a balance of probabilities that the application and notice of hearing package received by the Landlord also included evidence. The Tenant's documentary evidence is therefore admissible for consideration.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?
Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on January 13, 2019 with consecutive fixed term agreements each year with the last agreement to end on January 12, 2022. The Tenant moved out on December 22, 2021. Rent of $4,000.00 was payable on the 13th day of each month. The security deposit has been dealt with.

The Tenant states that the Landlord had agreed to refund the rent paid in advance on December 13, 2021 for the period ending January 12, 2022 if the Tenant moved out of the unit on December 22, 2021. The Tenant states that the Landlord agreed to refund the Tenant at the per diem rate of $130.00. The Tenant claims return of the rent paid

for the period December 22, 2021 to January 12, 2022 in the amount of $2,710.00. The Tenant provides a translated copy of a message sent from the Landlord. The Landlord states that they did make an offer to pay the Tenant $3,000.00 if the Tenant moved out on December 12, 2021 but as the Tenant did not respond the offer was withdrawn by the Landlord and that the Landlord informed the Tenant that the tenancy would end on January 12, 2022 with rent payable to that date. The Landlord provides a copy of this message in a language other than English with no translation provided.

The Tenant claims $1,897.50 as the cost of emergency repairs. The Tenant makes the following submissions in relation to this claimed amount:

The Tenant states that the Landlord was informed of a hornets' nest at the unit and that although they asked the Landlord to remove the nest the Landlord refused. The Tenant states that they removed the hornets' nest and claim the incurred cost of $300.00. The Landlord states does not dispute that the owner initially refused to be responsible for the removal of the hornets nest the owner did not dispute paying for the cost of the removal upon receipt from the Tenant an invoice for the costs. The Tenant states that they were not informed that the owner would pay for these costs with a receipt provided.

The Tenant states that on January 25, 2020 the garburator failed and that although the matter was reported to the Landlord the Landlord refused to make the repair. The Tenant made the repair and claims the cost of $200.00. The Landlord states that there was a previous issue with the garburator in the first year of the tenancy and that the Landlord made the repairs. The Landlord states that they were not informed of any issue in 2020.

The Tenant states that every time the Landlord was asked to make repairs the Landlord refused so the Tenant stopped informing the Landlord and just made the repairs. The Tenant claims $200.00 for a drainage repair on August 19, 2020. The Tenant confirms that the Landlord was not informed of the need for this repair.

The Tenant claims $550.00 for the cost to repair the boiler in February 2021. The Tenant states that the Landlord was informed over the phone of the boiler problem however the Landlord refused to make any repair. The Landlord states that they have no recall of any problem with the boiler.

The Tenant states that a leak from the upper floor caused damage to the lower unit ceiling. The Tenant states that the Landlord informed the Tenant that they were responsible for the repairs. The Tenant states that they had no idea how they were responsible for the damage but paid for the costs since the leak came from their unit. The Tenant claims return of the $600.00 paid for this repair. The Landlord states that the Tenant was responsible for this cost as the Tenant caused the damage. The Landlord states that the fault was determined on the basis that the leak came from the Tenant's unit. The Landlord states that they did not inspect the Tenant's unit for the source of the leak. The Landlord states that they were unaware of any leak problem from the upper unit as the Tenant never informed them of a problem and only discovered the lower unit damage when reported to them from the tenant of that lower unit.

The Tenant makes no further submissions on the claim for costs of emergency repairs, and I note that a document submitted as a receipt for repair of a drainage is not in English.

The Tenant claims $4,000.00 as compensation for the Landlord having ended the tenancy for landlord's use. The Parties confirmed that the Tenant was not given any formal notice to end tenancy for landlord's use on any approved RTB form.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Section 44(1)(d) of the Act provides that a tenancy ends if the tenant vacates the rental unit. Rent is payable only to the end of a tenancy. Although the tenancy agreement provides that rent was payable to the end of the fixed term on January 12, 2022, given the Tenant's supported evidence that the Landlord agreed to return the rent paid for the period December 22, 2021 to January 12, 2022, and based on the undisputed evidence that the Tenant moved out of the unit on December 22, 2021, I find on a balance of probabilities that the Tenant is entitled to the claimed amount of **$2,710.00**.

Section 33(1) of the Act provides that in this section, **"emergency repairs"** means repairs that are

(a)urgent,

(b)necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c)made for the purpose of repairing

(i)major leaks in pipes or the roof,

(ii)damaged or blocked water or sewer pipes or plumbing fixtures,

(iii)the primary heating system,

(iv)damaged or defective locks that give access to a rental unit,

(v)the electrical systems, or

(vi)in prescribed circumstances, a rental unit or residential property.

Based on the Tenant's supported evidence of a receipt for repairs to the boiler and garburator I find that the Tenant has substantiated that these repairs were emergency repairs.

As the Tenant provided no evidence of how or when the leak to the lower unit occurred, I find that there is insufficient evidence to substantiate that the ceiling damage was an emergency repair. I also consider the Landlord's evidence that they were not informed

of any leak by the Tenant, the Tenant's evidence that they stopped informing the Landlord of any issues and the Tenant's evidence that they assumed responsibility for the leak. For these reasons, I dismiss the claim for the costs to pay for the damage to the ceiling.

Section 33(3) of the Act provides that a tenant may have emergency repairs made only when all of the following conditions are met:

> (a)emergency repairs are needed;
>
> (b)the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
>
> (c)following those attempts, the tenant has given the landlord reasonable time to make the repairs.

The Tenant's evidence of having informed the Landlord of problems with the kitchen sink drainage and garburator on January 25, 2020 and the problems with the boiler in February 2021 held a ring of truth. There is no evidence that the Tenant caused the problems. The Tenant's evidence that the Landlord always refused to make repairs also held a ring of truth. The Landlord's evidence that they did refuse to remove the hornet's nest and made no inspections of the unit when being informed of drainage and boiler problems supports the Tenant's evidence of the Landlord's reluctant if not dismissive approach to their obligations to maintain the rental unit. For these reasons I accept the Tenant's evidence that the Landlord was informed of these emergency repairs and that the Landlord refused to make them. I find on a balance of probabilities that the Tenant was entitled to make these repairs.

Section 33(5) of the Act provides that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

> (a)claims reimbursement for those amounts from the landlord, and
>
> (b)gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

While the Tenant's written account of the repairs made in January 2020 and February 2021 appear to be solely as set out in the sparse particulars in their application, I do accept that the Landlord was given a sufficient account for these repairs and was provided with a receipt for these repairs. I find therefore on a balance of probabilities that the Tenant is entitled to the costs claimed of **$200.00** and **$550.00** for the emergency repairs to the boiler and garburator as set out in the invoice. As no calculations were made for any GST allocation, I decline to include any GST payment made on these amounts. The Tenant made no other clear submissions or provided any other translated invoices for additional emergency repair costs, and I cannot therefore make any further determination of emergency repair costs.

Section 32(1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that

> (a)complies with the health, safety and housing standards required by law, and
>
> (b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Although the claim for removal of the hornet's nest cannot be defined as an emergency repair, based on the undisputed evidence that the Landlord was informed of the presence of a hornets' nest I find that the Landlord had the responsibility to remove the nest in order to maintain the safety of the unit. Further as the Landlord's evidence is that they did offer to pay for the cost of its removal and given the Tenant's invoice for this cost I find on a balance of probabilities that the Tenant is entitled to the costs claimed of **$300.00**.

Section 51(1) of the Act provides that a tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Section 49(7) of the Act provides

that in order to be effective to end the tenancy a notice to end tenancy for landlord's use must comply with section 52 of the Act requiring the notice to be on the approved Residential Tenancy Branch (the RTB") form. Based on the undisputed evidence that the Tenant was not given any notice to end tenancy for landlord's use on an approved RTB form I find that the Tenant is not entitled to the one-month compensation claimed and I dismiss this claim.

As the Tenant's claims have met with some success, I find that the Tenant is entitled to recovery of the **$100.00** filing fee for a total entitlement of **$3,860.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$3,860.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: September 7, 2022

Residential Tenancy Branch