



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNNRT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33.

Both parties were represented at the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlords were represented by their agent (the "landlord").

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to any of the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in 2012 and ended on September 20, 2021. The monthly rent at the end of the tenancy was \$1,500.00 payable on the first of each month. A security deposit of \$675.00 was collected and is still held by the landlords. No written tenancy agreement was ever prepared. No condition inspection report was prepared at any time for this tenancy.

The tenant submits that in 2016 the landlord began charging them utilities and they paid utility bills from that point until the end of the tenancy. The tenant also testified that rent was increased from \$1,050.00 to \$1,500.00 at that point and they paid the amount of \$1,500.00 each month for the following 5 years until the tenancy ended. The tenant now seeks a monetary award of \$30,168.18 for overpaid rent and utilities. The tenant also seeks an award of \$3,000.00 for “renovations and hard work and time [they have] put into that unit and property”. The tenant submitted as documentary evidence multiple pages of handwritten submissions, receipts for payments and various photographs.

There is a lengthy history of applications filed by the tenant under the file numbers on the first page of this decision.

The decision of May 10, 2021 dealt with the tenant’s application for emergency repairs where they failed to attend the hearing to pursue and was accordingly dismissed.

The decision of September 9, 2021 dealt with multiple applications by the tenant seeking cancellation of Notices to End Tenancy, repairs, monetary awards, a dispute of a rent increase and authorization to reduce rent. The portions of the tenant’s application pertaining to monetary awards, rent reduction and dispute of a rent increase were dismissed with leave to reapply and the parties entered a settlement agreement to end the tenancy on September 20, 2021.

The hearing of January 25, 2022 dealt with the tenant's application for a monetary award and dispute of a rent increase and were dismissed with leave to reapply due to the tenant having failed to serve all of their documentary materials on the landlord.

The tenant has filed another application with a scheduled hearing date of November 10, 2022. While I attempted to join the hearings to be heard together today pursuant to my authority under Rule of Procedure 2.10 and the Branch's goals of efficient dispute resolution process, the parties said they are not prepared to address that application. Accordingly, that matter was not heard today and the parties will be occupying yet another separate hearing slot for that matter.

The landlord disputes the tenant's claim in its entirety and submits there is no basis for a monetary award.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find the tenant has failed to establish any portion of their claim on a balance of probabilities. While I accept the evidence of the parties that the tenant began paying utilities and a new monthly rent as of 2016, I find little evidence that these were unilaterally imposed by the landlord in breach of the *Act*, regulations or tenancy agreement.

The evidence before me is that the tenant paid their utilities and the rent in the amount of \$1,500.00 for nearly 5-years from 2016 to 2021 without disputing the amount or indicating that there was any issue. It is only in the last months of the tenancy that the tenant has filed a flurry of applications for dispute resolution. I find the conduct of the parties to be consistent with those who have entered into a valid and enforceable agreement about payment of utilities and monthly rent. If the tenant believed they were being charged a higher rate or utilities in violation of their agreement it was open for

them to file an application earlier. It would be reasonable to expect that there would be some correspondence between the parties raising it as a disputed issue. Instead, the evidence before me shows that the tenant paid the amounts without question consistently and is now seeking a return of the amounts they claim were overpaid.

Based on the evidence I find that the parties entered a new agreement wherein the tenant was obligated to pay utilities and a rent in the amount of \$1,500.00 from 2016 onwards. I find the parties understood the terms of this new agreement and conducted themselves accordingly throughout the rest of the tenancy. I find there has been no breach of the agreement in requiring the tenant to pay utilities or a new rent amount.

I further find that even if there was a breach on the part of the landlord the tenant is estopped from seeking a monetary award due to their conduct over the span of 5-years.

Estoppel is a legal principle whereby a party is barred from enforcing a contractual right when it is inequitable to do so due to the party's previous conduct or representations.

In order to successfully raise an estoppel defence, the party seeking to defeat the rights of the other must show:

1. that the party seeking to enforce their legal rights, took some action, whether by representation or conduct, with the intention that the other party rely on that action; and
2. the other party relied on that action to its detriment changing their course of action based on the representation.

I find that the tenant consistently made payment of utilities and rent in the amount of \$1,500.00 from 2016 onwards. It is clear that the landlord relied upon this representation that a new agreement was created between the parties in allowing the tenant to continue to reside in the rental unit. I find that the tenant cannot make clear and unambiguous representation for many years by paying utilities and rent and subsequently claim that the amounts charged are in breach of the agreement. I find the tenant is estopped from claiming recovery of utilities or overpaid rent.

I find insufficient evidence to support the tenant's claim for recovery of costs for renovation and work. I find the photographs and receipts submitted by the tenant to be of limited probative value as I find it is difficult to see what deficiencies are claimed by the tenant and what can be seen appear to be more cosmetic issues. I find little

evidence that the tenant informed the landlord of any deficiency or requested repairs to the rental property in a reasonable manner. I find the tenant's submissions to have little substantive merit.

I find the tenant has not met their evidentiary burden on a balance to demonstrate that there has been any loss attributable to a breach on the part of the landlord. Accordingly, I dismiss the tenant's application in its entirety.

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: September 26, 2022

Residential Tenancy Branch