Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, MNDCT, OLC

Introduction

The Tenant filed an Application for Dispute Resolution (the "Application") on July 11, 2022 seeking the Landlord's compliance with the legislation and/or the tenancy agreement. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on December 2, 2022.

Both parties attended the conference call hearing. I briefly reviewed the process and protocol of the hearing format and provided each party the opportunity to ask questions prior to the commencement of the hearing.

Preliminary Matter – disclosure of evidence

At the outset, the Tenant provided that they sent their evidence to the Landlord in advance of the hearing with attention to deadlines set in the *Residential Tenancy Branch Rules of Procedure*. They provided registered mail numbers to show they used a verified method for service.

They sent the second of their disclosure packages to the Landlord on November 28, 2022, stating the Landlord should have received these 72 hours in advance of the hearing. The record of tracking for this particular item shows delivery on November 30, 2022.

The *Rules of Procedure* provide that an Applicant's evidence not submitted at the time of the Application "must be received by the respondent and the Residential Tenancy Branch . . . not less than 14 days before the hearing." Applying Rule 3.17, I do not accept this evidence, with consideration to the number of months that passed since the

Tenant completed the Application. I see no reason why the Tenant did not make this material available earlier in the process. I exclude this evidence and give it no consideration herein.

The Tenant also provided evidence to the Residential Tenancy Branch on the scheduled day of the hearing. With the same consideration set out above, I exclude this evidence for the same reason.

In summary, the Landlord did not have the opportunity to review this evidence before crafting a response to the Tenant in answer to the issues listed on the Application. This has prejudiced the Landlord in this hearing: they did not have a chance to respond substantively to the Tenant's evidence before having to provide their own within the established timeline for the Respondent's evidence. With nothing from the Tenant to show earlier delivery of evidence to the Landlord, I exclude all of the Tenant's evidence from consideration in this matter.

The Landlord provided their evidence directly to the Residential Tenancy Branch on November 17, 2022. The Landlord gave detail on sending this information to the Tenant via registered mail. The Tenant stated they did not receive these materials because of the access to individual units at their current address. The Landlord's record contains a form completed by the Tenant when they gave their forwarding address to the Landlord, signed on July 11, 2022.

The Landlord stated the tracking history for this item shows the Tenant did not retrieve if from the local post office after notification was left with them.

Rule 3.16 sets out that the Respondent (here, the Landlord) must be prepared to show that their evidence was served as required by the *Rules of Procedure*. Additionally, Rule 3.15 specifies a timeline of "not less than seven days before the hearing."

With reference to s. 88 of the *Act*, I find the Landlord completed service as required, and within the timeline specified in the *Rules of Procedure*. They sent the registered mail on November 18; as per s. 90(a) of the *Act*, I deem this material received by the Tenant on November 23, 2022. Because the Landlord complied with timelines and methods for delivery, I give this material full consideration in this hearing.

Preliminary Matter – correct issues for hearing

The Tenant completed their Application on July 11, 2022, applying solely for the Landlord's compliance with the legislation and/or tenancy agreement. For details on this they provided two issues concerning compensation. For ease of organization in this hearing, I have organized into each relevant issue below and amended the Tenant's Application at the time of the hearing.

Preliminary Matter – compensation for monetary loss or other money owed

The Tenant applied on July 11, 2022. This was prior to the end-of-tenancy date of July 31, 2022. At the time of their Application, the Tenant listed $903.23 as "pro-rate rent due to giving [them] two months notice for landlord's use of property."

In the hearing, the Tenant confirmed verbally, under affirmed oath, that they received a refund for this money from the Landlord. The Landlord in their evidence provided an image of the cheque issued to the Tenant for the same reason/amount.

I find this matter is settled between the parties, and dismiss, without leave to reapply, this particular portion of the Tenant's Application for this reason. I list the single remaining issue for consideration immediately below.

Issue(s) to be Decided

Is the Tenant eligible for compensation for the cost of emergency repairs they made during the tenancy, pursuant to s. 33 of the *Act*?

Background and Evidence

At the start of the hearing, the Landlord confirmed the basic terms of the tenancy agreement as specified by the Tenant on their Application. The basic terms of the agreement are not in dispute in this hearing.

The Tenant in the hearing set out the following in regard to repairs they paid for:

- in January 2022 they informed the Landlord of the need for emergency repairs, specifying the malfunctioning toilet and the entrance door, and the presence of pests
- They presented that the Landlord stated it was “not a problem” to initiate repairs; however, nothing was done, and the Landlord simply provided excuses or other delays.
- They thoroughly brought the matter to the Landlord’s attention with an 8-page letter and “numerous emails” to address the issues. They described the Landlord as “laughing in [the Tenant’s] face”.
- The rental unit was very dirty when the tenancy started, and this necessitated the need to purchase several cleaning products.
- A contractor visited, as arranged by the Tenant, on January 18th and January 21st to fix the rental unit entrance door and fix the toilet. This contractor discovered differing hinge parts for the correct installation of the door, and this necessitated the Tenant having to purchase these extra materials and parts separately on their own.
- The Tenant also paid for a toilet seat and cleaning supplies on their own as well.

On the Tenant’s Application, they provided the amount of $1,357.70 as total expenses to them for repairs made. In the hearing, the Tenant clarified that the correct amount was actually $1,203.72.

The Tenant initiated the process for repairs in the rental unit in January 2022. They purchased materials independently on their own for the purpose of completion of these repairs. In the hearing, I queried the Tenant on when they provided receipts for their purchases and contractor work to the Landlord. The Tenant stated they did not provide these to the Landlord at the time, or near to the end of the tenancy, because they “did not want to overwhelm the first arbitrator”, this in reference to a prior dispute resolution proceeding wherein they disputed the Landlord seeking to end the tenancy by way of an end-of-tenancy notice. Rather, they informed the Landlord that they would claim for the receipts at a later date.

The Landlord in the hearing questioned the reasonableness of this approach by the Tenant. In the Landlord’s submitted Statement of Facts, they illustrate that they had asked for the Tenant to send an itemized list of repairs to the rental unit, with receipts, by email on February 8, 2022. They stated: “This is a LEGITIMATE request as at that point in time, I had no idea of the cost and the nature of the various repairs.” They followed up with a reminder on February 21. Both of these messages are in the Landlord’s own evidence:

- the Landlord sent an email to the Tenant on February 8, 2022 asking for a list of "every item and the associate amount that you are looking for reimbursement. I need receipt for every single item too."
- the Landlord sent another message on February 21, 2022 repeating their request for a list and a scan of the receipts

On February 21, as shown in the Landlord's evidence, the Tenant responded: "

> I don't want any confusion from Judge's side or your side that I'm making a deal with you because I'm not. We will wait for judge's decision about us moving out or not, and the other related decisions in respect this unit and the maintenance in it.

The Landlord only learned of the Tenant's claimed amount -- $1,357.70 as stated on the Application – by way of the Notice of Dispute Resolution Proceeding for this hearing. As of the date of the Landlord's written submission – provided to the Residential Tenancy Branch on November 17, 2022 – they had not received details or receipts from the Tenant.

The Landlord reiterated in the hearing that they did not receive receipts or invoices from the Tenant in regard to repairs and materials paid for by them. They questioned the amount in total provided by the Tenant on their Application.

Also in the Landlord's evidence:

- the email from the Tenant to the Landlord dated January 15, 2022 wherein they refer to their 8-page letter that "is a part of the official documents that will be used in Residential Tenancy Branch on Arbitration hearing and possibly in the court IF the things that I am requesting to be fixed in the unit are not done ASAP."

The Landlord provided a copy of the Tenant's 9-page letter in their evidence. On page 8 of this letter dated January 14, 2022 the Tenant stated:

> I was NOT reimbursed the money back, although I have all receipts and I have asked about the payback money from the owner's son. . . I am requesting this money to be paid back to me because I have had paid things to be fixed in this unit from my own pocket.

In the hearing, the Tenant responded to say they had queried the Landlord on the need for various repairs in the rental unit in November 2020, very soon after their initial move into the rental unit. The Tenant also stated that they could not provide receipts to the

Landlord at the end of the tenancy because of the packing involved with their move out from the rental unit.

Analysis

The Tenant on their Application stated the repairs involved in the rental unit were emergency repairs. I queried this to some extent in the hearing, and the Tenant in response reiterated the need for especially a working toilet and basic security at the entrance of the rental unit. The Tenant throughout the hearing expressed their frustration with the Landlord not completing repairs as requested throughout this tenancy.

I refer to the Act s. 33 in its entirety to set out various points that receive consideration below:

(1)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.

(2)The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3)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.

(4)A landlord may take over completion of an emergency repair at any time.

(5)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.

(6)Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a)the tenant made the repairs before one or more of the conditions in subsection (3) were met;
(b)the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
(c)the amounts represent more than a reasonable cost for the repairs;
(d)the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7)If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

The Landlord provided statements in the hearing that questioned whether all of the work the Tenant paid for was truly of an "emergency" nature. The onus of proof on that singular point is on the Tenant here. I find the Tenant did not provide ample proof of this. The Landlord provided in their evidence a copy of the Tenant's January 14, 2022; I find matters as described by the Tenant in that letter were not classifiable as "emergency" as set out in s. 33(1)(c) of the *Act*. They described the lock on the main rental unit door as "worked out, hard to lock/unlock, sticky and plain old". I find this does not equate to what is set out in s. 33(1)(c)(iv), that is "damaged or defective locks that give access to a rental unit."

In sum, I find the issues the Tenant presented in the hearing are not matters of emergency repairs as set out in the *Act*. Further with reference to s. 33, I find the Tenant clearly did not provide receipts or invoices upon the Landlord's request as they are obligated to do by s. 33(5)(b). The Tenant flatly declined to send this information to the Landlord, despite making their pleas to the Landlord plain in the January 14 letter. I cannot rectify why the Tenant would complain – consistently and adamantly -- about not being reimbursed, as set out on page 8, yet not provide any receipts to the Landlord when asked to do so. This plainly violates the *Act* if the Tenant wished to rely on the need for "emergency repairs" as justification for their expenditures at that time.

I find as fact that the Tenant did not provide receipts to the Landlord when the Landlord made the request. This was on February 8, 2022. I find the Tenant had no acceptable reason to withhold details of repairs made and paid for, and proof of amounts they paid for with receipts. This carried on through to the end of the tenancy.

For the Tenant's benefit, I will also consider whether they are properly owed money for incidental expenses they made on maintenance or repairs, though NOT on an emergency basis.

To be successful in a claim for compensation for damage or loss the Applicant has the burden to provide enough evidence to establish the following four points:

- That a damage or loss exists;
- That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- The value of the damage or loss; **and**
- Steps taken, if any, to mitigate the damage or loss.

This requires a consideration of the quality of evidence submitted by the Tenant. I have excluded the Tenant's evidence from consideration for reasons set out above in regard to service of that evidence to the Landlord. With no evidence in place on the amounts they paid, I dismiss the Tenant's Application in its entirety for this reason. The Tenant's lack of disclosure also makes it questionable whether a damage or loss truly existed.

Throughout the latter part of the tenancy, as well as through this dispute resolution process, the Tenant has declined to provide proof of money they paid in a timely manner. I find the Tenant acted unreasonably throughout. This was ultimately detrimental to them: there may have been legitimate compensation owed to them; however, they acted unfairly throughout by not sharing information or disclosing information. It appears from their dialogue they were prepared to proceed straight to a dispute resolution process for reasons that I cannot speculate on. Ultimately this cost them some amount of money personally; however, this entirely because they did not proceed with due consideration to fairness to their Landlord in a contractual relationship, nor with regard to common administrative fairness rules in a tribunal setting.

For the reasons above, I dismiss the Tenant's claim in its entirety, without leave to reapply. This decision forms part of the record concerning this tenancy and will be reviewed in any future action initiated by the Tenant through the Residential Tenancy Branch.

Conclusion

I dismiss the Tenant's Application 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 s. 9.1(1) of the *Act*.

Dated: December 3, 2022

Residential Tenancy Branch