



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, AAT, PSF, OLC

Introduction

This hearing was convened to hear the Tenant's Application for Dispute Resolution made on October 21, 2022. The Tenant applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order granting compensation for monetary loss or other money owed;
- an order requiring the Landlord to allow access to the unit;
- an order requiring the Landlord to provide services or facilities required by the tenancy agreement or law; and
- an order that the Landlord comply with the Act, Residential Tenancy Regulation (the Regulation), and/or the tenancy agreement.

The Tenant and the Landlord attended the hearing and provided affirmed testimony.

The Tenant testified the Landlord was served with the Notice of Dispute Resolution Proceeding package by registered mail on November 10, 2022. The Landlord acknowledged receipt.

The Landlord testified the documentary evidence in response to the Tenant's application was served by email on November 30, 2022. The Tenant acknowledged receipt.

No issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issues to address are whether or not the Tenant is entitled to orders requiring the Landlord to permit access to the rental unit, to provide services or facilities required by the tenancy agreement or law, or to comply with the Act, Regulation, and/or the tenancy agreement. Accordingly, I find it appropriate to exercise my discretion to dismiss the Tenant's request for compensation for monetary loss or other money owed, with leave to reapply.

Issues to be Decided

1. Is the Tenant entitled to an order requiring the Landlord to allow access to the unit?
2. Is the Tenant entitled to an order requiring the Landlord to provide services or facilities required by the tenancy agreement or law?
3. Is the Tenant entitled to an order that the Landlord comply with the Act, Residential Tenancy Regulation (the Regulation), and/or the tenancy agreement?

Background and Evidence

The parties agreed the Tenant was to occupy a basement suite at the rental property. However, at the time the tenancy agreement was signed on September 6, 2022, the basement suite was not yet completed. Nevertheless, the fixed term tenancy was to begin on November 1, 2022 and continue to October 31, 2023. Rent of \$1,250.00 per month was to be due on the first day of each month. The Tenant paid a partial security deposit of \$425.00 which was returned to the Tenant. No other payments were received by the Landlord. A copy of the tenancy agreement, signed on September 6, 2022, was submitted into evidence.

Despite the tenancy agreement described above, the Landlord testified that necessary renovations could not proceed, and the tenancy agreement had to be cancelled due to “significant and unexpected costs.” In an email dated September 26, 2022, the Landlord advised the Tenant as follows: “Due to recent events out of our control and after inquiring with the city...we will not be able to complete the basement renovation in time for your scheduled tenancy of the basement suite...This confirms the cancellation of our unfinalized agreement.” The Landlord testified the Tenant was informed of the decision as soon as possible.

The Landlord testified that there is no basement suite for the Tenant to access or occupy. The intended renovations have not been completed due to cost. There is no kitchen, no separation between the upper floor and the basement, and plumbing and electrical work has not been completed.

The Tenant testified that although she has been looking for an alternative, she has not yet found appropriate accommodation. She is currently living in an Airbnb in another community where she pays more rent than stipulated in the tenancy agreement. The Tenant also testified she has incurred storage and other costs as a result of the Landlord’s breach.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 16 of the Act confirms that the rights and obligations of a landlord and a tenant take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. In this case, in reliance on the Landlord’s promise that a basement suite would be completed, the parties entered into a tenancy agreement dated September 6, 2022. Although the Tenant was to occupy the rental unit on November 1, 2022, the rights and obligations of the parties took effect on September 6, 2022. However, on September 26, 2022 – 20 days after the tenancy agreement was entered into – the Landlord advised the Tenant that the basement suite would not be completed and cancelled the tenancy agreement.

I find the Landlord breached the tenancy agreement. The Act does not permit a landlord to end a fixed term tenancy unilaterally due to financial hardship. However, I accept the evidence of the Landlord who testified that there is no basement suite that is suitable for occupation by the Tenant. As noted by the Landlord, there are no kitchen facilities and no separation between the upstairs and the basement. The Landlord also testified that plumbing and electrical work are required. As it would effectively require the Landlord to complete significant renovations, I find it would not be appropriate to order the Landlord to provide access to the rental property or to provide services or facilities required by the tenancy agreement or law.

Considering the above, I find it appropriate to dismiss the Tenant's requests for orders that the Landlord allow access to the rental unit, provide services or facilities required by the tenancy agreement or law, and comply with the Act, Regulation and/or the tenancy agreement. These requests are dismissed without leave to reapply.

Conclusion

The Tenant's requests for orders that the Landlord allow access to the rental unit, provide services or facilities required by the tenancy agreement or law, and comply with the Act, Regulation, and/or the tenancy agreement are dismissed without leave to reapply.

As noted above, the Tenant's request for compensation arising from the Landlord's breach of the tenancy agreement is dismissed with 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: December 13, 2022

Residential Tenancy Branch