



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes CNC, MNRT, MNDCT, RR, PSF, OLC

Introduction

The tenant seeks various relief under the *Residential Tenancy Act* (the “Act”). It should be noted that as the tenancy has ended and the tenant no longer occupies the rental unit, the claims for relief under sections 47(4), 62, 65, and 65(1)(f) of the Act are moot.

The tenant confirmed that he only seeks compensation for (1) \$475.00 for emergency repairs, and (2) \$5,000.00 for business losses, moving expenses, and storage fees.

The tenant, a witness for the tenant, the landlord, and two witnesses for the landlord, attended the teleconference hearing on Friday, December 30, 2022.

Issue

Is the tenant entitled to compensation?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. However, only the necessary oral and documentary evidence that helped resolve the issue of the dispute and explain the decision is included below.

The tenancy began on June 15, 2020 and ended in November 2022. Rent was \$1,000. There was no security or pet damage deposit. There was no written tenancy agreement for this tenancy; the tenancy agreement was “verbal.”

The tenant testified that he seeks \$475 in compensation for repairs that he and another individual did to the back steps at the property. These steps had sludge on them and were very slippery. The tenant slipped and almost fell. He deemed the stairs to be a hazard. So, he went ahead and scraped, sanded, and repainted the stairs. The tenant figures that the total amount of labour was about \$475.

The tenant also seeks \$5,000 for a business loss of \$3,500 and \$1,500 for moving expenses and storage fees. The tenant testified that he operated a mushroom growing business (spawning) and that he lost two orders for September and October in the amount of approximately \$3,500. The mushroom spawn was lost because there was insufficient heat in the rental unit.

According to the tenant, the landlord shut off the furnace (which heats both the basement suite rental unit and the upper portion of the house) from April to October 2022. The tenant's only source of heat were two portable electric heaters. Without the electric heaters the temperature in the rental unit dipped to 9°C. This killed the spawn.

The remaining \$1,500 sought by the tenant was for moving expenses and storage fees. Under oath, the tenant testified that he had not submitted any invoices or receipts for the storage fees and that he had paid cash for the movers.

The landlord testified that the tenancy agreement was only for the basement suite, and not for the stairs or for the deck, where the tenant apparently stored his mushroom growing supplies. The tenant was not permitted to use the stairs or the deck. Indeed, the landlord himself avoids the stairs during the winter due to their propensity to be slick and slippery.

Regarding the larger claim, the landlord testified that he was but a phone call away if the tenant needed the furnace turned on. "One flip of a switch" and the furnace could have been activated. However, the tenant never contacted him and the landlord "can't read his mind." In any event, the landlord argued that he ought not be liable for business losses incurred in the operation of an unlicensed business. The rental unit was rented out for residential and not business operation purposes, the landlord added.

Analysis

Section 7 of the Act states that 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 for damage or loss that results. A party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine if a party is entitled to compensation, the following four-part test must be met: (1) Did the respondent breach the Act, the tenancy agreement, or the regulations? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant take reasonable steps to minimize their loss?

In an administrative hearing, the person making a claim must provide evidence that it is more likely than not that the facts occurred as claimed. This is known as the “balance of probabilities” standard of proof. The burden of proof is on the person making the claim.

1. Claim for Emergency Repairs

Regarding the \$475 claim for emergency repairs, this claim must be dismissed.

Emergency repairs, and the reimbursement for such, are covered in section 33(1) of the Act. In order for a repair to be categorized as “emergency repairs” they must fall into one of the categories listed in subsection 33(1)(c). Stairs are not one of the items covered by emergency repairs. And so, the tenant’s repairs to the stairs do not meet the statutory requirement of being an emergency repair. No claim for compensation or for reimbursement for the repairs may therefore be made.

2. Claim for Business Losses, Moving Expenses, and Storage Fees

Regarding the \$5,000 claim, the tenant did not provide any receipts or invoices or other documentary evidence to support the moving and storage costs. Because the landlord disputed this claim, without such evidence I cannot consider this aspect of the claim.

As for the business losses, there is no evidence before me to find that the landlord breached the tenancy agreement, the Act, or the regulations that might give rise to a successful claim by the tenant. Moreover, I see no evidence before me to conclude that the tenant took reasonable steps to minimize his loss of the mushroom spawn.

The tenant did not dispute the landlord’s sworn testimony that he was but a phone call away. If the tenant had phoned the landlord, then the landlord presumably could have guided him through the process of turning the furnace back on. But he did not. In conclusion, I am not persuaded that the tenant has proven this aspect of his claim on a balance of probabilities.

After considering all of the evidence before me, I find that the tenant has not proven his two claims for compensation on a balance of probabilities. With respect, the tenant's application must therefore be dismissed.

Conclusion

The application is hereby dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: December 31, 2022

Residential Tenancy Branch