



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT RP OLC FFT**

Introduction

This hearing was reconvened by way of conference call as a result of the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenants seek:

- an order for the Landlord to comply with the Act, *Residential Tenancy Regulations* ("Regulations") and/or the tenancy agreement pursuant to section 62;
- an order for the Landlord to complete repairs to the rental unit pursuant to section 32;
- a monetary order for compensation pursuant to section 67; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

The original hearing of the Application was held on October 28, 2022 (the "Original Hearing"). The Landlord and the two Tenants ("JC" and "AT") attended the Original Hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure*.

The Original Hearing was scheduled for a 60-minute period. However, by 69 minutes into the hearing, it became clear that the parties would not be able to complete their testimony and rebuttals. Pursuant to Rule 7.8 of the RoP, I adjourned the Original Hearing and issued a decision dated October 29, 2022 ("Interim Decision"). For the reasons stated below, in the Interim Decision, I ordered the Tenants to re-serve their evidence for the hearing at least 14 days before the adjourned hearing and for the Landlord to serve any evidence she believed was relevant to respond to the Tenants' Application and evidence at least 7 days before the adjourned hearing. The Interim Decision, and Notices of Dispute

Resolution Proceeding for an adjourned hearing (“Adjourned NDRP”), scheduled for January 16, 2023 at 1:30 pm am (“Adjourned Hearing”), were served on the parties by the Residential Tenancy Branch. The Landlord, JC and AT attended the Adjourned Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the Original Hearing, JC stated the Tenants served the Notice of Dispute Resolution Proceeding and some of their evidence (“NDRP Package”) on the Landlord by registered mail on June 25, 2022. JC provided the Canada Post tracking number to corroborate her testimony. The Landlord acknowledged she received the NDRP Package by registered mail. I find the NDRP Package was served on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

At the Original Hearing, JC stated the Tenants served an amendment dated July 27, 2022 to the Application (“Amendment”) on the Landlord by registered mail but she could not recall the date of mailing. The Landlord acknowledged receipt of the Amendment by registered mail. I find the Amendment was served on the Landlord in accordance with the provisions of section 89 of the Act.

At the Original Hearing, JC stated the Tenants served an additional evidence package on the Landlord by registered mail on October 6, 2022. JC provided the Canada Post tracking number for service of the Tenants’ additional evidence to corroborate her testimony. I find the additional evidence was served on the Landlord in accordance with section 88 of the Act.

At the Original Hearing, the Landlord stated she served her evidence in the Tenants’ mailbox. JC acknowledged the Tenants received the Landlord’s evidence. I find the Landlord’s evidence was served on the Tenants in accordance with the provisions of section 88 of the Act.

Preliminary Matter – Dismissal of Tenants’ Claims

The Tenants’ Application included claims for (i) an order that the Landlord complete repairs to the rental unit; and (ii) an order for the Landlord to comply with the Act, Regulations and/or tenancy agreement (collectively the “Tenants’ Other Claims”). The parties agreed the Tenants vacated the rental unit in June 30, 2021.

Section 62(4)(b) of the Act states:

62(4) The director may dismiss all or part of an application for dispute resolution if
[...],
(b) the application or part does not disclose a dispute that may be determined under this Part, or
[...]

As the Tenants have vacated the rental unit, they are not entitled to seek an orders for the Tenants' Other Claims. As such, I dismiss the Tenants' Other Claims without leave to reapply.

Preliminary Matter – Submission of Additional Evidence

The parties agreed the Tenants rented the rental unit that is located downstairs in the residential property ("Basement Unit") from July 1, 2020 to June 30, 2021. The parties agreed the Tenants have rented since 2014, and continue to rent, the upper rental unit of the residential premises ("Upper Unit"). The Tenants mistakenly believed their claim for monetary compensation in the Application encompassed not only claims relating to the Basement Unit, which is the only rental unit listed in the Application, as well as the Upper Unit in which they are currently residing. Due to this misunderstanding, the Tenants submitted numerous files to the RTB that were not related to the Basement Unit. In order to simplify the identification of the Tenants' evidence files relating to this Application, I ordered the Tenants to re-reserve the relevant evidence for their Application that relates to the Basement Suite on the Landlord and submit that evidence to the RTB.

Issue to be Decided

Are the Tenants entitled to:

- an order for monetary compensation from the Landlord?
- recover the filing fee for the Application from the Landlord?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

AT submitted into evidence a copy of the tenancy agreement dated June 1, 2020 between the Landlord and Tenants for the Basement Unit. The parties agreed the tenancy commenced on July 1, 2020, for three months and then on a month-to-month basis, with rent of \$1,500.00 per month. The Tenants were not required to pay a security or pet damage deposit. The parties agreed the Tenants vacated the rental unit on June 30, 2021. Based on the testimony of the parties, I find there was a residential tenancy between the parties and that I have jurisdiction to hear the Application.

JC and AT both stated they complained to the Landlord about cooking smoke entering the Upper Unit from the Basement Unit while it was occupied by the former tenants. AT stated the range hood did not work and the Landlord refused to install one as it would require too much power on the existing electrical circuits. AT stated the Landlord eventually had a range hood installed in the Basement Unit on June 8, 2022, after the Tenants vacated the Basement Unit. AT stated the Tenants also complained about disturbance of their quiet enjoyment as a result of the noise caused by the former tenants of the Basement Unit. AT stated the Upper Unit and Basement Unit had shared electrical wiring that resulted in the breakers tripping. AT stated the flooring in the laundry room was disgusting. AT submitted evidence a texts and emails relating to complaints about the previous tenants who lived downstairs. AT stated the Tenants made complaints to the city in which the residential property is located.

AT stated the previous tenants in the Basement Unit gave notice to end their tenancy. AT stated that, as the Landlord did not resolve their complaints regarding the Basement Unit, the Tenants decided to rent the Basement Unit themselves after the former tenants vacated it. AT stated that, when they rented the Basement Unit, he intended to soundproof the basement. AT stated that, when he did a walk through of the Basement Unit, he asked the Landlord if it was a “legal suite” and the Landlord told him it was a legal suite. AT submitted into evidence a copy of the City bylaw regarding use of residential premises. AT stated he also wanted to use the Basement Unit so that he could provide clients with services as a fitness coach. AT stated the Tenants paid the Landlord \$18,000.00 rent for the 12 months they rented the Basement Unit. The Landlord did not dispute the Tenants paid \$18,000.00 rent during the tenancy of the

Basement Unit. this testimony. AT stated that, as the rental unit was not a legal suite, the Tenants were seeking compensation of \$18,000.00, being 18 months of rent, for breach of contract by the Landlord. AT submitted into evidence a completed monetary order worksheet on Form-RTB setting out their sole claim was for recovery of the \$18,000.00 rent they paid the Landlord for 12 months.

AT stated there was a pipe leaked in the bathroom that flooded the bathroom and adjoining bedroom. AT stated it took two weeks to dry out the flooring.

The Landlord disputed AT's testimony and stated she told the Tenants the Basement Unit was an "authorized" suite. AT stated the flooring in the basement area was merely cosmetic and it did not affect the use of the Basement Unit. The Landlord stated an inspection from the City viewed the Basement Rental Unit. The Landlord stated the inspector issued a report that found the Basement Suite did not have any safety issues. The Landlord stated that everything was working in the Basement Unit including the fridge, stove, heat, water and fireplace.

Analysis

Rule 6.6 of the RoP states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Based on Rule 6.6, the onus to prove his case, on a balance of probabilities, is on the Landlord.

Sections 7 and 67 of the Act state:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.
- 67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Branch Policy Guideline 16 ("PG 16") addresses the criteria for awarding compensation. PG 16 states in part:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Accordingly, the Tenants must provide sufficient evidence that the four elements set out in PG 16 have been satisfied.

The Tenants seek \$18,000. 00 compensation from the Landlord. The Tenants claimed the Landlord told them the Basement Unit was a legal suite. The Landlord denied she told the Tenants the Basement Unit was a legal suite and that she had told them that it was an authorized suite. The only provision in the Act relating to "illegal" rental units is section 47(k) of the Act that permits a landlord to end a tenancy when a governmental authority requires the rental unit to be vacated. Other than for this provision, the Act does not provide any mechanism for the enforcement of the bylaws of a city, municipality or other local government. Put differently, the Act cannot be used to enforce the bylaws of a municipal government where the issuance of a vacancy permit for use of the rental unit by tenants has not been received from the municipality. Furthermore, the Act does not give a tenant the right to seek compensation from the Landlord merely on the basis that the rental unit does not have a vacancy permit. Section 1 of the Act defines "rental unit" as:

"rental unit" means living accommodation rented or intended to be rented to a tenant;

The Tenants viewed the Basement Unit and negotiated a tenancy agreement for the Basement Unit as living accommodation. There was no evidence before me that the Basement Suite was rented for any other purpose than as residential living accommodations. As such, there is no evidence before me that the Landlord breached the Act, Regulations and/or tenancy agreement. Based on the foregoing, I find the Tenants are not entitled to any compensation from the Landlord on the basis that the rental unit was not a "legal" rental unit. As such, I find the Tenants' are not entitled to compensation of \$18,000.00 from the Landlord.

The Tenants also stated they were seeking compensation on the basis that the Landlord had failed to perform repairs to the Basement Unit as well as for loss of use and disturbance of their quiet enjoyment resulting from water leakage from a pipe in the bathroom for the rental unit. The Tenants did not make a claim for compensation for loss of use of the Basement Unit or disturbance of their quiet enjoyment relating to use of the Basement Suite in the Application. As such, I cannot adjudicate these claims in this hearing.

As the Tenants have not been successful in the Application, they are not entitled to recover of the filing fee for the Application.

Conclusion

The 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: January 26, 2023

Residential Tenancy Branch