



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RR, RP, PSF, LRE, LAT, OLC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order to allow the tenant to change the locks to the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The landlord testified that they did not receive the tenants' application and evidence package, which the tenant testified was sent by way of registered mail on September 20, 2022. The tenant provided a tracking number, and a search shows that the landlord had signed for the package on September 22, 2022. The landlord testified that they only

received documents for a civil proceeding. The tenant testified that the documents for the civil proceeding were not sent until later. After discussing the evidence and matter, the landlord confirmed that they still wished to proceed with the scheduled hearing, and did not take issue with the admittance of the tenant's evidence. The hearing proceeded as scheduled. The landlord did not submit any written for this hearing.

At the outset of the hearing, both parties confirmed that the tenancy had ended sometime on or about October 1, 2022. As this tenancy has come to an end, the tenant's application is cancelled, with the exception of the tenant's claim for a rent reduction in the amount of \$800.00.

Issues

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on June 25, 2022. Monthly rent was set at \$2,800.00, payable on the first of the month. The tenant testified that the landlord still holds their deposits totalling \$2,800.00. This tenancy ended on or about October 1, 2022.

The tenant originally filed this application on September 1, 2022 requesting several orders, as well as cancellation of a 1 Month Notice to End Tenancy for Cause that was served on August 22, 2022. The tenancy has since ended. The tenant requested a rent reduction of \$800.00 related to the landlord's failure to repair the rental unit, and provided the services and facilities that were supposed to be provided during this tenancy.

The tenant submitted a video and photos of a leaking toilet, as well as various holes in the rental unit. The tenant testified that the home was in disrepair, including missing railings which caused the tenant to fall and injure herself. The tenant testified that the landlord had promised the repairs were to be completed before the tenant moved in, but they were not. The tenant described the home was a "disaster", and after repeated requests to the landlord to repair the outstanding items, the landlord instead served the tenant with a 1 Month Notice to End Tenancy for Cause. The tenant testified that the

landlord lived far away, and could only attend to a few items at a time. The tenant testified that they did not have a working washing machine for weeks.

The landlord testified that the situation escalated where the landlord and their family responded with violence. The tenant testified that the landlord would enter the home without proper notice, violating their privacy and quiet enjoyment. The tenant testified that the landlord was angry, and threw out the tenant's belongings outside. The tenant testified that one night the landlord's daughter broke the front door. The tenant testified that the landlord also cut the power, and turned off the air conditioning and internet. The tenant testified that their children had to reside with their grandparents when the landlord shut off the power. The tenant testified that landlord was set on punishing the tenant with all these actions.

The landlord responded that the tenant was the aggressive party, and as a result they were unable to complete the requested repairs. The landlord testified that they did not feel safe, and could not attend without the presence of police.

The landlord testified that the home was newly renovated, and that the tenant still complained about numerous issues, and demanded new items such a new dishwasher, which was ordered for the tenant. The landlord testified that the tenant assaulted the landlord's daughter with a weapon, and as noted in the tenant's own text messages, the tenant refused further access to the rental unit.

The landlord notes that the tenant had already deducted rent, and the last rent payment was \$1,855.67, as paid by e-transfer on July 31, 21022. The landlord testified that the tenant was served with a 10 Day Notice for Unpaid rent on September 1, 2022, and the landlord subsequently filed for an emergency hearing for the early termination of the tenancy on September 1, 2022 because of the tenant's aggression. The landlord testified that the tenant moved out on October 1, 2022 after the landlord had paid the tenant \$500.00 to move out and leave the landlord alone, and the hearing was cancelled.

The tenant confirmed that they paid the landlord \$1,866.67 on July 31, 2022 towards the monthly rent, but that the amount reflected an adjustment for overpayment of rent as the unit was not ready for occupation as originally promised.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter " tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I have reviewed and considered the evidence and testimony before me. On preponderance of all evidence and balance of probabilities I find as follows.

As stated above, the tenant applicant has the burden of proof in supporting their claim for a rent reduction and monetary compensation. In this case, the tenant requested a rent reduction of \$800.00 for various issues the tenant faced during this tenancy. The tenant submitted photos, text messages, a video of a leaking toilet, as well an email from the plumbing company who was unable to perform repairs.

The landlord responded that they had attempted to perform repairs to what they testified was a newly renovated rental unit, but was unable to access and properly perform the repairs due to the ongoing dispute between the parties, and what the landlord considered to be an unsafe environment due to the aggressive behaviour from the tenant.

Although I am satisfied that there were many issues during this tenancy, I find that this is conflicting testimony about the incidents that took place during this tenancy. I find that there was clearly an ongoing dispute between the landlord and tenant, which involved violence and the attendance of police. Based on the evidence before me, I am unable to ascertain which party had instigated the violence. However, it is clear that relationship between the parties was not a positive one, which made the attendance of even licensed repair persons difficult, as shown by the correspondence by the plumbing company.

As noted above, the burden of proof falls on the applicant to support their claim. In this case, although I am satisfied that the tenant did communicate with the landlord their concerns about outstanding repairs, the text messages submitted are not dated, nor are the photos submitted. I cannot verify when these requests were made, nor am I satisfied that the tenant had provided any formal written requests for the repairs. Furthermore, although it is clear that the tenant was clearly frustrated about the lack of repairs, I find that the landlord had provided a reasonable explanation for the delay, which involved the inability to attend on the property to perform assessments or repairs. As noted in the tenant's own text message, the tenant had stated "You are welcome to send someone to make the repairs, but you are not personally welcome to enter our unit due to your aggressive..."

Although I find the tenant's request understandable considering the tumultuous nature of the relationship, the tenant was not in possession of an order restricting or setting

conditions on the landlords access to perform repairs, nor does the evidence show that the tenant had filed any previous applications for repairs or for an order to restrict the landlord's access. On the other hand, the landlord had filed an application for an early termination of the tenancy on September 1, 2022, and which was not heard by an Arbitrator as the tenants had moved out before the hearing date. I find that the landlord was within their right under the *Act* and legislation to enter the tenant's rental unit in order to perform repairs, as long as proper notice was provided or in the case of an emergency. Although there was reference to police reports, neither party submitted any in evidence. I do not find that the tenant had the right to restrict the landlord's access to do so.

The tenant also claims that the landlord had restricted or prevented the tenant's access or use of the internet, air conditioning, heat, and dishwasher. As noted above, not only is the burden on the applicant to support that the loss existed, the applicant must provide evidence to support the value of the loss claimed. In this case, I find this application falls short. Although the tenant requested a rent reduction of \$800.00, I am not satisfied that the tenant has supported this claim by providing a basis for how they had determined this entitlement.

I further note that the tenant referenced concerns about the landlord's behaviour in their application and in the hearing. Under section 87.3 of the *Act*, "Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has

- (a) contravened a provision of this Act or the regulations,
- (b) failed to comply with a decision or order of the director, or a demand issued by the director for production of records, or
- (c) given false or misleading information in a dispute resolution proceeding or an investigation.

I note that the Director has not delegated to me the authority to impose administrative penalties under section 87.3 of the *Act*. That authority has been delegated to a separate unit of the Residential Tenancy Branch. The administrative penalty process is separate from the dispute resolution process. The Compliance and Enforcement Unit (CEU) is a team within the Residential Tenancy Branch, and the tenant may pursue the appropriate remedied through this process if they wish. As I do not have the delegated authority to administer any penalties under section 87.3 of the *Act*, I decline to make any orders under this section.

As noted above, the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. I find that the tenant failed to support how they had calculated the amount claimed, either referenced and supported by similar claims of this nature, or by providing receipts, statements, or invoices to support the losses the tenant is seeking in this application. The amount claimed by an applicant also must not include any punitive element, which is unclear in this case as the amount claimed appears to be unsupported in evidence. On this basis I dismiss the tenant's application for a rent reduction without leave to reapply.

Conclusion

I dismiss the tenants' entire application 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 23, 2023

Residential Tenancy Branch