Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT FFT**

Introduction

This hearing was convened by way of conference call in response an application for dispute resolution ("Application") made by the Tenant under the *Residential Tenancy* Act (the "Act") in which the Tenant seeks:

- a monetary order for compensation from the Landlord 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 November 28, 2022 (the "Original Hearing"). The Landlord, the previous property manager ("ML") and the Tenant attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Original Hearing was scheduled for one hour and there was insufficient time to take all the parties' testimony and allow rebuttals at the Original Hearing. Pursuant to Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* ("RoP"), I adjourned the hearing ("Adjourned Hearing") and issued a decision dated November 30, 2022 ("Interim Decision"). The Interim Decision stated that Landlord and Tenant were not permitted to serve each other or file any additional evidence with the Residential Tenancy Branch ("RTB"). The Interim Decision, and Notices of Dispute Resolution Proceeding for the Adjourned Hearing, scheduled for December 20, 2022 at 11:00 am, were served on the parties by the Residential Tenancy Branch ("RTB").

The Landlord, ML and the Tenant Tenants 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, the Tenant stated she served the Notice of Dispute Resolution Proceeding and her evidence ("NDRP Package") on the Landlord by registered mail on April 30, 2021. The Tenant provided the Canada Post tracking number for serve of the NDRP Package on the Landlord. The Landlord acknowledged receipt of the NDRP Package. 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, the Landlord stated the Landlord he served his evidence on the Tenant by registered mail on August 18, 2021. The Landlord state the evidence package was returned as unclaimed. The Landlord stated he served his evidence on the Tenant a second time by registered mail. The Landlord provided the Canada Post tracking number for the re-reserve of his evidence on the Tenant. The Tenant acknowledged she received the Landlord's evidence. As such, I find the Landlord's evidence was served on the Tenant in accordance with the provisions of section 88 of the Act.

Preliminary Matter – Correction of Landlord's Name

At the outset of the hearing, I noted that the name of the respondent the Application was not a legal name. The Landlord stated the rental unit is owned by him and his two parents. The Landlord stated he was the person who acted on behalf of the three owners of the rental unit. The Landlord requested that I amend the Application to state his legal name as respondent.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* ("Rules") states:

> **4.2 Amending an application at the hearing**
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> In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The Tenant could reasonably have anticipated the Landlord would request an amendment to the Application to provide the legal name of the Landlord who acts on behalf of the three owners of the rental unit. As such, I order the Application be amended to remove the respondent named in the Application and to insert the legal name of the Landlord as the respondent.

Issues to be Decided

Is the Tenant entitled to:

- a monetary order for 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.

The Landlord said there was no signed tenancy agreement for the tenancy. The Tenant stated she paid the Landlord a security deposit of $725.00. The Tenant submitted into evidence a copy of her bank statement that discloses $725.00 was withdrawn from her account on April 3, 2020 to corroborate her testimony. The parties agreed the tenancy was to start on May 1, 2020, for a fixed term of one year, with rent of $1,450.00. The Landlord acknowledged he received the security deposit and that he was holding it in trust for the Tenant.

The Tenant stated the building manager told her that she could move in April 26, 27, 28, or 29, 2020. The Tenant did not refer, at the hearing, to any evidence she submitted to the RTB to corroborate this statement. The Tenant stated she viewed the rental unit on April 20, 2020 and found there were many tasks that were not completed. The Tenant stated a window in the living room had a hole in it that was about 6” to 8” by 3” x 4”. The Tenant stated the deck was not finished and there was dust and equipment everywhere in the rental unit and that a person was doing something in the bathroom. The Tenant stated the building manager promised the remaining items would be completed and things would be cleaned up for in time for her to take occupation of the rental unit. The Tenant stated she viewed the rental unit on April 26, 2020 and found there still items that were not completed. The Tenant stated she told the building manager that she could not take the rental unit in the condition it was in. The Tenant stated that she could not put up with the noise of workmen and dirt around her and her furniture. The Tenant submitted a number of emails and texts to and from the building manager regarding the progress of the work being performed on the rental unit and other items such as having access to three parking stalls on the morning of April 29, 2022 for move-in. The Tenant

stated she sent an email (the “Email”) to the Landlord on May 28, 2020 to tell him that she was not proceeding with the tenancy. The Tenant submitted the Email into evidence to corroborate her testimony. The Email stated:

> Hi [first name of property manager], thanks for letting me vent today about all the goings on with the suite.
>
> I have decided to not take the suite. I am sorry. I will drop the keys by in the morning tomorrow around 9am or so.
>
> I was hoping that the suite would be reasonably completed before today, and as mentioned, asked and offered extra bucks if I could move in a few days earlier. I am organizing a bunch of stuff and part of the strategy to get touch ups and cleaning done at this end requires me now to purchase a couple of storage lockers instead of moving things into the suite. I was hoping the carpets in the second bedroom would be clean enough for me to put items in there.
>
> Aside from things not being completed, I am equally concerned about how I would possibly move in as there seems to be a few hurdles to jump over with my heavy stuff, moving myself, and lining the truck up to the entrance
>
> I am sorry but I could not afford movers to move me and due to the virus, as mentioned, my friends sent their sympathy that they cold not assist. So all as left for me to move my own stuff. If I had the same amount of stuff as a 20 year old it would have been possible.
>
> It was nice to meet you and I hope your health improves.

The Tenant stated that, as a result of the Landlord’s failure to have the rental unit ready, it caused her significant time and costs to re-pack her possessions, move them and to pay for storage. The Tenant stated she was seeking $4,800.00 compensation from the Landlord. The Tenant submitted into evidence a spreadsheet detailing all of the expenses comprising her claim of $4,800.00. The Tenant also submitted into evidence the receipts for the expenses for moving and storage in support of her claim for compensation from the Landlord. I have not provided details of those charges for the reasons set out under the heading “Analysis” appearing below. At the Adjourned hearing, I asked the Tenant, why if she thought the Landlord had not completed with a material term of the tenancy agreement, did she not give the Landlord written notice to comply with a material term of the tenancy agreement, request the Landlord to correct it

within a reasonable period of time of the written notice and that, if he did not comply, then she would end the tenancy on a date that was after the date of the written notice. The Tenant responded that she did not know the law and that the Landlord should have known she was terminating the tenancy agreement based on her previous emails and discussions with him and the building manager.

The Landlord stated the carpeting was installed in the rental unit on April 8, 2020. The Landlord stated walls were painted on April 25, 2020 and all equipment had been removed. The Landlord stated that, at the time the Tenant viewed the rental unit on April 26, there was one door to be installed. The Landlord stated the door was repaired, painted and installed on April 28, 2020. The Landlord stated the window was cracked and not broken. The Landlord stated the patio was stable but had about 1 ½ hours of work to be completed. The Landlord stated he attempted to arrange for the window to be replaced by April 30, 2020 but he was unable to obtain a contractor to replace the window until April 15, 2020. The Landlord stated he would have had the window boarded up before the Tenant moved into the rental unit. The Landlord stated the rental unit was ready, clean and livable by the afternoon of April 28, 2020. The Landlord admitted he received the Email. The Landlord stated he was unable to re-rent the rental unit for May 1, 2020 as a result of the Tenant breaching the terms of the tenancy agreement.

Analysis

Rule 6.6 Residential Tenancy Branch Rules of Procedure (“RoP”) states:

> **6.6 The standard of proof and onus of proof**
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> 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.
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> 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 her case, on a balance of probabilities, is on the Tenant who has made the claim for compensation.

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.
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> 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 13") provides guidance on claims for damages or loss that has resulted from a party not complying with the Act, the regulations or a tenancy agreement. PG 13 states, in part:

C. COMPENSATION

> 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:
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> - 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.

Sections 16, 31(1) and 45(3) of the Act state:

> 16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.
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> 32(1) A landlord must provide and maintain residential property in a state of decoration and repair that
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> (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.
>
> 45(3) If a landlord has failed to comply with a material term of the tenancy agreement and *has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*

Although there was no signed tenancy agreement, the parties agreed the tenancy was to commence on May 1, 2020 with rent of $1,450.00 per month. The parties agreed the Tenant paid the security deposit. As such, I have found there was a tenancy between the Landlord and Tenant. Pursuant to section 16 of the Act, the rights and obligations of the Landlord and Tenant under the tenancy agreement took effect from the date the tenancy agreement was entered into, whether or not the tenant ever occupied the rental unit. I find the tenancy agreement took effect on the date the Tenant paid the Landlord the $725.00 security deposit, being April 3, 2020. I find the testimony and evidence of the parties indicates the Tenant was to move during the last few days of April 2020. It is unnecessary for me to determine the exact date the Tenant was to move in for the reasons stated below.

I find it was a material term of the tenancy agreement between the parties that the Landlord would provide the Tenant with the rental unit in a condition that complies with the requirements of section 32(1) of the Act. The Email was sent to the Landlord on May 28, 2020. The Email did not specify the items that the Tenant required to be corrected by the Landlord in order for the rental unit to comply with section 32(1) nor did she provide the Landlord with a reasonable period after sending the email for the Landlord to correct the situation. Furthermore, the Email did not state she would end the tenancy effective after the date the Landlord received the Email as required by section 45(3) of the Act. The Tenant stated she did not give the Landlord a notice that complied with section 45(3) of the Act because she did not know the law. I find the legal maxim "ignorance of the law is no excuse" applies to this case. The Tenant could have called the Contact Centre of the Residential Tenancy Branch to obtain information on the options she had to terminate the tenancy. Alternatively, the Tenant could have sought the advice of legal counsel. Based on the foregoing, I find the Tenant breached the Act and tenancy agreement when she did not comply with section 45(3) of the Act. As such, I find that the Tenant cannot now seek compensation from the Landlord for the expenses she subsequently incurred as a result of breaching the tenancy agreement herself. Based on the foregoing, I dismiss the Tenant's claim for compensation from the Landlord.

As the Tenant has been unsuccessful in the Application, I find the Tenant is not entitled to recover the filing fee for the Application from the Landlord.

As I have dismissed all of the claims made by the Tenant in the Application, I dismiss the Application in its entirety without leave to reapply.

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 19, 2023

Residential Tenancy Branch