Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRIBE MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, under section 67; and
- an authorization to recover the filing fee for this application, under section 72.

Tenants CN (the tenant) and MN attended the hearing. The respondent was represented by agent DB. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

Service

The tenant affirmed he served the notice of hearing and the evidence (the materials) via registered mail in May 2022. The landlord confirmed receipt of the materials.

Based on the undisputed testimony, I find the tenant served the materials in accordance with section 89(1) of the Act.

The landlord served his response evidence via registered mail on January 10, 2023. The landlord did not serve the response evidence earlier because he was on vacation.

Rule of Procedure 3.15 states:

> The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The Rules of Procedure state that "in the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded."

The hearing was on January 17, 2023. I excluded the landlord's response evidence, per Rule of Procedure 3.15.

Issues to be Decided

Is the tenant entitled to:

1. a monetary order for loss?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the ongoing the tenancy started on August 01, 2012. Monthly rent due on the first day of the month was $1,863.00 and increased to $2,000.00 after April 2022.

The tenant stated the landlord collected and holds a security deposit of $760.00 and a pet damage deposit of $760.00. The landlord testified he only collected and currently holds a security deposit of $760.00.

The tenancy agreement was submitted into evidence.

Both parties agreed the rental unit is a 3-level, 3 bedroom and 1,5 bathroom, 1,500 square feet townhome built in 1986.

The tenant is claiming rent compensation from March 15 to April 12, 2022 in the total amount of $1,706.75.

The tenant was on vacation in another province from March 13 to 20, 2022.

Both parties agreed that on March 15, 2022 the tenant learned that the rental unit flooded because of a leaky toilet and the tenant contacted the landlord. Both parties agreed the tenant is not responsible for the incident.

The tenant said the incident was preventable, as other units in the same complex flooded because of a defective toilet. The landlord affirmed he was not aware of the defective toilet, which was at the end of its useful life.

The landlord immediately acted to repair the flood by removing part of the tenant's furniture and installing industrial fans and the tenant contacted his tenant's insurance.

The tenant stated that the rental unit was unliveable because of the flood from March 15 to April 14, 2022 (the repairs period), as all the bathroom, kitchen, dining room and home office furniture had to be removed for the repairs. The tenant testified there was damage to the ceiling, walls and floor of the living room and kitchen and that the tenant could not cook in the rental unit.

The landlord emailed the tenant:

> **March 18, 2022**: As you may have already known the extent of damage, we need to dry off the affected area before any scope of works can begin. As of now we do not have time frame as to when the drying process will finish (on normal circumstances can be within 5 days), but once this is done, repairs will follow. For the time being, we will be assessing extent of repairs necessary.
> As these progresses, living in the unit will be very inconvenient and it is good you already have contacted your insurance. You may have to temporarily vacate the place until all works are completed.
> **March 22, 2022**: In regard to our question over the phone about date the "unit was unlivable", my impression is that, the date can be reckoned at the time of leak, where bathroom flooring was flooded, living room floorings were soaking wet and some section of the ceiling were damaged. This date incidentally was also the date Phoenix brought in their drying equipment.

The landlord said the that he informed the tenant on March 18, 2022 that the rental unit was unlivable in the context of the tenant's insurance and that the landlord was not in the best position to declare the unit unliveable. The landlord affirmed the rental unit was liveable during the repairs period and only some areas of the rental unit were not available for use. The landlord completed the repairs for the tenant's benefit and paid around $11,000.00 for the repairs. The landlord stated that Residential Tenancy Branch Policy (RTB) Guideline 2B, section D, applies to this matter.

I asked the landlord to reference the emails sent on March 18 and 22, 2022. The landlord testified that a rental unit is not unliveable because of an inconvenient repair.

The tenant stayed with his relatives from March 20 (the day he returned from vacation) to 28, 2022. The tenant said that he paid his relatives roughly $1,000.00 in groceries and gift cards because they allowed him to stay at their house. The landlord inquired why the tenant did not provide a receipt for the payment of $1,000.00.

The tenant stayed in a short term rental unit from March 28 to April 14, 2022 and paid the total amount of $4,163.00. The tenant said that his insurance paid him $2,332.00 and he incurred a loss in the amount of $1,831.00, as this was the *pro rata* rent amount.

Both parties agreed the tenant was able to return to the rental unit on April 14, 2022 and that the tenant paid rent during the repairs period.

The tenant is claiming compensation for the cost of registered mail packages to serve the application, the cost of printing documents and six hours of work to prepare this application.

The tenant submitted a monetary order indicating a total claim in the amount of $2,071.75.

Analysis

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 the case is on the person making the claim.

Section 65(1) of the Act states:

> (1)Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], **if the director finds that a landlord or tenant has**

> **not complied with the Act, the regulations or a tenancy agreemen**t, the director may make any of the following orders:
> […]
> (b)**that a tenant must deduct an amount from rent to be expended on** maintenance or a repair, or on a service or facility, as ordered by the director;
> […]
> (f) **that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement**;
>
> (emphasis added)

Section 65 of the Act should be read in conjunction with sections 7 and 67:

> 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.
>
> Director's orders: compensation for 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.

RTB Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> 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.

I accepted the uncontested testimony that the rental unit flooded because of a leaky toilet, the tenant is not responsible for the damages and the tenant paid rent in full when the rental unit was undergoing repairs.

Section 32 of the Act states:

> 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 find the landlord's testimony about the rental unit not been liveable when it was undergoing repairs was vague and not convincing. Based on the tenant's convincing testimony and the landlord's emails dated March 18 and 22, 2022, I find the rental unit was not liveable from March 15 (the day of the flood incident) to April 14, 2022 (the day the landlord completed the repairs), as the tenant could not cook or have his furniture in the kitchen, dining room and bathroom.

I find the landlord breached section 32 by receiving rent for the period from March 15 to April 14, 2022, as the rental unit was not suitable for occupation by a tenant during this time.

Based on the tenant's undisputed and convincing testimony, I find the tenant proved, on a balance of probabilities, that he suffered a loss in the amount of $1,831.00 because he paid this amount to stay in a short-term rental from March 28 to April 14, 2022, as the rental unit was not liveable.

I find the tenant mitigated his losses by returning to the rental unit immediately after the landlord completed the repairs.

The landlord did not explain the relevance of RTB Policy Guideline 2B to this matter. The landlord vaguely read some sections of this policy guideline. I note that Policy Guideline 2B has provisions about ending a tenancy for a renovation and not about compensation regarding a period the tenant could not use the unit while it was undergoing repairs.

The tenant claimed compensation in the total amount of $1,706.75. As such, I award the tenant compensation in the amount of $1,706.75.

The costs of prints needed to serve the application, registered mail and time to prepare the application are not recoverable under the Act. I dismiss the tenant's claim for compensation for these expenses.

As the tenant was successful, I award the recovery of the filing fee paid for this application in the amount of $100.00.

In summary, the tenant is awarded $1,806.75.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a tenant may be deducted from any rent due.

Both parties agreed the monthly rent increased in 2022 from $1,863.00 to $2,000.00 – an increase of approximately 7.4%. For the purpose of educating the parties, I note that a landlord may only increase rent in accordance with section 42 of the Act and that in 2022 landlords could only increase rent by 1.5%, unless the parties mutually agreed to a higher rent increase in writing.

Conclusion

Pursuant to sections 7, 32, 65, 67 and 72(2)(a) of the Act, I authorize the tenant to deduct the amount of $1,806.75 from the next rent payment.

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