Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRT, MNDCT, LRE, OLC, FFT**

Introduction
The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act, (the "Act")* and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "*Act*") for:

- An order to recover the cost of emergency repairs made by the tenant during the tenancy pursuant to section 33
- A monetary order for damages or compensation pursuant section 67;
- An order suspending the landlord's right to enter the rental unit pursuant to section 70;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord and both tenants attended the hearing. The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue
As all parties were present, service of documents was confirmed. The landlord acknowledged being served via email with:

a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
b) the Respondent Instructions for Dispute Resolution;
c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch;

The landlord testified that the tenants did not serve her with any evidence.

The tenants testified that they had uploaded all their evidence to the Residential Tenancy Branch dispute access site and that they understood that the landlord would have access to the uploaded evidence. The tenants acknowledged that they did not provide a copy of their documentary evidence to the landlord.

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package **and all evidence** as required by the Act and the Residential Tenancy Branch Rules of Procedure, pursuant to Rule 3.5. I find that the tenants did not serve their evidence to the landlord and consequently, I ordered that the tenant's documentary evidence would be excluded from consideration in this decision pursuant to Rule 3.17. I explained that I would accept the tenant's affirmed testimony as evidence.

The tenants acknowledged being served with the landlord's evidence via email more than a week prior to the hearing. This complies with the rules of procedure and the landlord's evidence was admitted for this decision.

Preliminary Issue

The landlord testified that the tenancy has ended and the tenants have not provided their forwarding address to her as required under the Act. The tenants confirmed that the email addresses provided on the Notice of Dispute Resolution Proceedings are valid emails and acknowledge that the landlord may serve any documents related to this tenancy upon them using those email addresses. The email addresses are recorded on the cover page of this decision and I order that the landlord may serve any and all documents related to this tenancy upon both tenants using those email addresses pursuant to section 71 of the Act.

The parties agree that the tenancy has ended. Section 62(4) allows the director to dismiss an application if there are no reasonable grounds for the application or if the

application does not disclose a dispute that may be determined under Part 5 of the *Residential Tenancy Act*. As this tenancy has already ended, I dismiss the tenants' application seeking an order the landlord comply with the Act and restricting the landlord's right to enter the rental unit pursuant to section 62(4).

Issue(s) to be Decided

Are the tenants entitled to the monetary orders they seek?
Can the tenants recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

Not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant gave the following testimony. The rental unit is the upper unit of a house with both an upper and lower unit. In July of 2017, the landlord got a tenant for the lower unit. The parties went before an arbitrator who found it *"unreasonable that the landlord has placed the burden on the upper tenant of paying for the electric and gas bills for the residential property containing two rental units and requiring the tenant to collect the 25% portion of the bills from the lower tenant"* That arbitrator ordered the landlord transfer those bills into her own name by September 15, 2022. The arbitrator further ordered that "*the tenant is at liberty to file an application for dispute resolution to seek monetary compensation from the landlord for 25% of the electric and gas bills for which they have not received reimbursement*." The file number for the previous dispute is recorded on the cover page of this decision.

The tenant testified that the monthly rate for hydro is $95.00 and for Fortis, it's $144.68. Total for both is $239.68 per month. 25% of that is $59.92. The tenant paid the lower unit tenant's hydro until they moved out, a period of 62 months. [$59.92 x 62 = $3,715.04]. The landlord has reimbursed them $750.00 for these utilities, but they want the full amount [$3,714.04 - $750.00 = **$2,965.04**]. The tenant seeks compensation in this amount.

The tenant also seeks the equivalent of a month's rent because the landlord sought to raise his rent after the tenant successfully beat the landlord's notice to end tenancy for cause. The day after the decision was given, the landlord brought in a realtor and threatened to sell their unit. The tenants felt forced to move. Also, the tenants testified that the occupant of the lower unit banged on her ceiling, was obnoxious and loud and intermittently shut off the power to the upper unit. This made the tenants uncomfortable and want to leave.

The tenants want the equivalent of a second month's rent because the tenancy has been stressful. The landlord deprived them of quiet enjoyment of the space. They felt forced out. They had to pay rent at two rentals because they took the first place they could find.

Lastly, the tenant seeks to recover $467.06 for various household fixes done throughout the tenancy. For example, he got the blades on the lawnmower sharpened and the landlord didn't pay for it although promising to do so. The tenant acknowledges that his bills were excluded from being considered for this hearing due to not being exchanged with the landlord and gave no further testimony regarding this portion of the claim.

The landlord gave the following testimony. There were no issues between the upper and lower unit tenants for the first 4 years they shared the house. The landlord was happy everybody got along. During the pandemic lockdown, the harmony broke down as these tenants got several pets which disturbed the lower unit tenant. The landlord started to get complaints from both parties about the other's behaviour.

The landlord doesn't understand why the tenants never sought payment from the lower unit tenant for the hydro and fortis utilities. The first the landlord knew of it was August 18, 2022. The landlord asked the tenant how much the lower unit tenant owed, and the tenant gave average numbers for 2021. The lower unit tenant didn't agree with these figures, saying hydro and gas was cheaper in earlier years and the tenant must provide previous years' bills to review. None were provided to the landlord.

The landlord denies the tenants were made to feel unsafe in their tenancy. She always made appointments and attended the unit according to their schedule. The tenants secretly kept animals without the landlord's knowledge or permission. The sounds of the dogs running across the hardwood floors disturbed the lower unit tenant and she knocked on the ceiling to let these tenants know it disturbed her. The landlord testified that she told the lower unit tenant that she couldn't bang on the walls or ceiling, and it stopped.

After the arbitrator cancelled the landlord's notice to end tenancy for cause and ordered the dogs could stay, the landlord considered selling the house to get rid of the hassle of having tenants. The landlord acknowledges a realtor came to give an appraisal however she decided not to sell it because the market was not favourable. The tenants ended their tenancy without paying rent.

Analysis

Section 7 of the Act states: 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.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

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

[the 4-point test]

I concur with the arbitrator who found it unreasonable that the tenants were to maintain the hydro and fortis bills in their own name and then seek to recover 25% from the lower unit tenant. I find the requirement to be unconscionable and is therefore not enforceable pursuant to section 6(3) of the Act. I accept that the tenant was paying the lower unit tenant's portion of the hydro bills for the 62 months as he testified. The

amounts stated for hydro at $95.00 per month and fortis at $144.68 per month are within reason and 25% of the sum of both is $59.92 per month. After deducting the $750.00 the tenant acknowledges the landlord paid, I award the tenant **$2,965.04.**

The second portion of the tenant's dispute involves a claim for a lack of quiet enjoyment of the rental unit and being intimidated into leaving the rental unit because the landlord sought a sale. To prove that there was a breach of quiet enjoyment, the tenant must provide sufficient evidence to show there was a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions or inaction which permitted interference by an external force within the landlord's power to control. For this, I find insufficient evidence from the tenants in support. From my interpretation of the evidence, I find that the tenants were at least 50% responsible for the disharmony between themselves and the lower unit tenant. While they may not have purposefully caused a disturbance to the lower unit tenant, I find the noise of the dogs significantly contributed to the lower unit tenant's actions in banging on their walls and ceiling. I do not find the landlord failed to provide quiet enjoyment of the rental unit. Further, a landlord has a right to sell the rental unit while it is occupied by tenants. I find the landlord has not violated any section of the Act or the tenancy agreement in having a realtor view the property. I dismiss this portion of the tenant's application.

The third portion is similar in nature to the second, 1 month's compensation for hardship. I find a lack of evidence to justify awarding this to the tenants. The tenants state that they started paying rent at their new home before ending this tenancy however I do not find this action amounts to any breach of the Act, regulations or tenancy agreement by the landlord. I find no evidence of the landlord forcing the tenants to leave, as the evidence shows the tenants ended the tenancy themselves. This portion of the claim is likewise dismissed without leave to reapply.

Lastly, the tenant acknowledged that their evidence was excluded and their claim to recover miscellaneous repairs made during the tenancy could not be substantiated. I dismiss this portion of the tenant's claim as there is insufficient evidence to support it.

The recovery of the filing fee is at the sole discretion of the arbitrator. I find that the tenant was successful in less than half of his claim and I decline to award the tenant the recovery of the filing fee.

Conclusion

I issue the tenant a monetary order in the amount of **$2,965.04.**

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: February 13, 2023

Residential Tenancy Branch