



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, DRI, ARI-C, OLC, FFT

Introduction

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

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an

opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is a determination required for an additional rent increase?

Should an order be made to have the landlord comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to a monetary order as compensation for loss or damage under the Act, regulation or tenancy agreement?

Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenant gave the following testimony. On July 8, 2021 the tenant left a pan unattended on the stove in his unit causing a kitchen fire. The tenant testified that this was his fault. The tenant testified that he didn't have renters insurance because the landlord didn't tell him. The tenant testified that he paid the landlords insurance deductible of \$1000.00 since the landlords insurance was going to cover the cost. The tenant testified that he has had to pay an additional seven thousand dollars to settle with the insurance company.

The tenant testified that the landlord decided to use the insurance money to renovate the whole house so that he could evict him and get higher rent. The tenant testified that many repairs that have been conducted are not necessary and is not damage from the fire. The tenant testified that the repairs are ongoing and he seeks \$4000.00 for the loss of quiet enjoyment. The tenant also seeks \$3400.00 in overpayment of utilities. The tenant testified that the tenancy agreement only specifies his costs for water, electricity and heat. The tenant also seeks the recovery of the filing fee for this application and a from a previous hearing.

The landlord gave the following testimony. The landlord testified that the tenant's logic differs from his. The landlord submits that the tenant caused the fire and is responsible for all of the damage and costs incurred. The landlord testified that the tenant didn't have insurance so he offered his to assist the tenant and any costs beyond the one thousand dollars is between the tenant and the insurance company. The landlord testified that the tenancy agreement is very clear about what's not included. The tenant is responsible for all utilities including garbage and sewer. The landlord testified that the tenant has restricted access and at times outright denied access for repairs to be completed. The landlord testified that many of the extra repairs have been requested by the tenant. The landlord testified that he is the victim and that the tenant caused this entire situation through negligence and now wants to be paid for that negligence. The landlord testified that he disputes the tenants entire claim.

Analysis

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. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Filing Fee from a previous hearing \$100.00

A determination was made by another arbitrator, and they found that the tenant wasn't entitled to the recovery of the filing fee. I further explained to the tenant as that matter was not before me, I am unable to make any findings and therefore dismiss this portion of his application.

Insurance Deductible \$1000.00

The tenant admitted that he caused the fire and didn't have insurance. The tenant used the landlord's insurance to avoid paying the full amount of the damages which the landlord alleges was over \$28,000.00. I find that the tenant is not entitled to the

recovery of this cost as he was at fault for starting the fire and that any subsequent claims made by the insurance company are outside of the landlord's control. I dismiss this portion of the tenant's application.

Loss of Quiet Enjoyment \$4000.00

The tenant did not provide sufficient evidence to illustrate negligence or recklessness. In addition, the tenant did not provide sufficient evidence of mitigation or actual loss, accordingly; I dismiss this portion of the tenant's application.

Overpayment of Utilities \$3400.00

The tenancy agreement submitted by both parties clearly shows that garbage, sewer, heat, hot water and electricity is NOT included; accordingly, I dismiss this portion of the tenant's application.

Overpayment of Rent \$350.00

The tenant was given a full opportunity to address his claim however, he was silent on this point. In addition, the documentation submitted for this portion of his claim was insufficient and lacked details and specifics, accordingly; I dismiss this portion of the tenants claim.

Filing Fee \$100.00

As the tenant has not been successful in any portion of his application, I hereby dismiss his request for the filing fee.

Conclusion

The tenant's 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: February 27, 2023

Residential Tenancy Branch