



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's wife, landlord Z.Z. and landlord F.H. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord was assisted by an advocate (the "advocate"). The landlord briefly attended the hearing and provided limited affirmed testimony.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

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."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

Landlord Z.Z. confirmed receipt of the tenant's application for dispute resolution and evidence. The tenant confirmed receipt of the landlord's evidence. I find that both

parties were served with the above documents in accordance with the *Act*. Neither party brought forward any issue with the timing of service.

Preliminary Issue- Naming of Parties

The original application for dispute resolution named the tenant's wife as the tenant. In the tenancy agreement entered into evidence, the tenant is listed as a tenant and the tenant's wife is listed as an occupant.

Residential Tenancy Branch Policy Guideline #13 (pg #13) states that an occupant does not have rights or obligations under the tenancy agreement unless the landlord and the existing tenancy agree to amend the tenancy agreement to include the new person as a tenant.

The tenancy agreement was not amended. Neither party submitted that an oral amendment was made. In the hearing I informed the tenant's wife that as an occupant she does not have standing to bring an application for dispute resolution against the landlord. As stated in PG #13, an occupant does not have rights or obligations under the tenancy agreement. The tenant's wife testified that she has authority to act on her husband's behalf and usually handles the tenancy related matters with the landlords because her English is better.

Landlord Z.Z. testified that he consented to amending the tenant's application for dispute resolution to remove the tenant's wife and add the tenant. The tenant's wife agreed to the above. The tenant called into the hearing, affirmed to tell the truth, agreed to be added as the tenant in this application for dispute resolution in place of his wife and appointed his wife as his agent. After providing the above testimony, the tenant exited the telephone conference. Based on the agreement of both parties, I so amend in accordance with section 64 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy, at the subject rental property, started on February 1, 2020. Monthly rent in the amount of \$1,245.50 is payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant's application for dispute resolution seeks \$3,736.50 for loss of mental health of the tenant's wife and family. The tenant's wife testified that during the relevant period, the tenant, the tenant's wife and their daughter resided in the subject rental property.

Both parties agree that in December of 2021 a pipe burst in the unit above the subject rental property causing damage the subject rental property, the unit above the subject rental property and a unit beside the subject rental property.

Both parties agree that the subject rental property required significant repairs and that while the landlord completed the repairs, the landlord provided the tenant and the tenant's family with another unit in the subject rental property to stay in. Both parties agree that while the tenant and the tenant's family resided in the other unit, the tenant continued to pay rent on the subject rental property, but did not pay rent on the unit they were staying in. Both parties agree that the landlord provided one month's rent free during the four months the tenant and the tenant's family were out of the subject rental property while it was being repaired. The landlord's wife testified that during the four-month repair, they were permitted back into the subject rental property of a two-week period of time.

The advocate submitted that the majority of the damage caused by the flood was to the subject rental property and that the other two units damaged were fixed much more quickly than the subject rental property. The advocate submitted that the tenant's daughter has special needs and that being out of the subject rental property caused excessive stress to the family. The advocate submitted that the tenant's wife was placed on mental health medication to deal with her child and day to day life.

The tenant entered into evidence a doctor's note pertaining to the tenant's wife, dated February 6, 2022 which states:

It is hereby confirmed that this patient was seen by the doctor at this clinic today, regarding her anxiety, insomnia, and stress, which are the result of recent stressors in her residence.

The tenant entered into evidence a prescription dated February 16, 2022 and a prescription dated May 9, 2022.

The tenant's wife testified that when she was going through the highly stressful time, Z.Z. did not respond to her and would hang up the phone when she called and F.H. would tell her to call landlord Z.Z.

The tenant's wife testified that the landlords did not treat her the same as the other damaged units which were fixed much sooner than the subject rental property. The tenant's wife alleged that they were not treated the same as English speaking tenants.

Z.Z. testified that he and F.H. are immigrants whose second language is English and that they would never treat people differently because they speak different languages.

Z.Z. testified that the flood occurred due to a frozen pipe during a record cold snap in December of 2021. Z.Z. testified that he believes the unit in which the burst pipe originated in was empty at the time of the burst pipe and the heat was off. Z.Z. testified that the landlord did not cause the flood and was not negligent. Z.Z. testified that as soon as the flood occurred the landlord started repairs as soon as possible.

Z.Z. testified that the unit above and to the side of the tenant's unit did not require major remediations and so were repaired quickly. Z.Z. testified that drywall in the other units did not need to be cut and the carpets did not need to be replaced.

Z.Z. testified that the subject rental property had major damage that necessitated half the ceiling in the living room and bedroom to be cut out; however, there was asbestos in the ceiling so special remediation was required which took longer. Z.Z. testified that the carpet also had to be replaced. Z.Z. testified that drying equipment was immediately provided after the flood.

Z.Z. testified that the unit the landlord provided to the tenants to live in during the remediation was newly renovated and the landlord asked the tenants if they would like to move into it permanently, but the tenants declined and waited to get back into their original unit. This was not disputed by the tenant's wife.

Z.Z. testified that the landlord acted in good faith and went above and beyond what was required. Z.Z. testified that the tenant was required to get tenant's insurance to cover alternative accommodation following a flood, but the tenant did not do so, so the landlord kindly provided the tenant and his family with accommodation.

Z.Z. testified that it took significantly longer for the landlord to complete the repairs to the subject rental property as compared to the other damaged units because the subject rental property had 10 times more damage.

The advocate submitted that the parties had a previous hearing, the file number for the previous hearing is located on the cover page of this decision. In the previous file, the tenant's wife filed a claim for repairs, monetary damage and recovery of the filing fee. The parties entered into the following settlement agreement dated April 20, 2022:

Both parties agreed to the following final and binding settlement of all issues listed in this application for dispute resolution:

1. The landlord will replace the drywall and the carpet of the rental unit by May 01, 2022.
2. The landlord will install a new carpet in the rental unit.
3. The tenant will be allowed to return to the rental unit by May 01, 2022.
4. The tenant is at liberty to submit a new application for monetary compensation.

Both parties agree that the agreed repairs pertained to the flood damage. The advocate submitted that the above Settlement Agreement shows negligence of the part of the landlord because the tenant had to file an application for dispute resolution to get the landlord to repair the damage.

Analysis

Section 7 of the *Act* states that 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. 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.

Section 67 of the *Act* states that 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 Policy Guideline 16 (PG #16) states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

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.

Failure to prove one of the above points means the tenant's claim fails.

The tenant's monetary claim is for damage to the family's mental health following the flood and remediation process. In support of the tenant's wife's claim regarding her mental health, the tenant's wife provided a single doctor's note and two prescriptions.

The doctor's note does not state that the tenant has suffered trauma or been diagnosed with any mental illness as a direct result of the landlords' alleged conduct. The doctor note simply states that the tenant's wife was seen once at a clinic about her anxiety, insomnia, and stress, which are the result of recent stressors in her residence. The stressors are not specifically stated, and it is not clear precisely what this pertains to.

The tenant's wife's medical records were not provided, and it is not clear if the prescriptions entered into evidence were regular prescriptions or new prescriptions. No medical records pertaining to the tenant or the tenant's daughter were entered into evidence.

I find that a single doctor's note noting a single visit, is not enough to prove, on a balance of probabilities, that the tenant, the tenant's wife or the tenant's daughter suffered mental harm as a result of the landlord's alleged actions. I therefore find that the tenant has not proved, on a balance of probabilities, that a loss was suffered. As the tenant has failed to prove the second part of the four part test set out in PG #16, I dismiss the tenant's monetary claims and decline to consider if the other three parts of the test were met.

As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the filing fee for this application, pursuant to section 72 of the *Act*.

Conclusion

The tenant's application is dismissed 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 06, 2023

Residential Tenancy Branch