Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding NASH, HARVEY, AND ASSOCIATES INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, RP, OLC, FFT

Introduction and Preliminary Matters

On October 18, 2022, the Tenants made an Application for Dispute Resolution seeking a rent reduction pursuant to Section 65 of the *Residential Tenancy Act* (the "*Act*") seeking a repair Order pursuant to Section 32 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On November 2, 2022, this matter was set down for a hearing on February 27, 2023, at 9:30 AM.

Both Tenants attended the hearing, with K.C. attending as an advocate for the Tenants. P.H. attended the hearing as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could 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. As well, all parties in attendance provided a solemn affirmation.

K.C. initially advised that the Landlord was served with the Notice of Hearing package, and some evidence, by registered mail on November 3, 2022, and P.H. confirmed that this package was received. However, as service of evidence was discussed, it became increasingly unclear what documentary evidence was specifically included in the Notice of Hearing package. In addition, P.H. then indicated that the Landlord was actually

served two Notice of Hearing packages for some reason, and when K.C. was asked to clarify what transpired pertaining to service, he then acknowledged that one Notice of Hearing package was served to the dispute address mistakenly on November 3, 2022, and that one package was then served directly to the Landlord on November 3, 2022.

Regardless, in these Notice of Hearing packages, I received varying statements from K.C. and Tenant M.J. of what documentary evidence was specifically included in those packages, and it was evident that they were not entirely sure of the particular contents. P.H. advised that he received some documentary evidence pertaining to text messages submitted by the Tenants. However, while the beginning of the text message chain that he had before him coincided with what the Tenants allege that they served, the end of that text message evidence that P.H. had before him differed from what K.C. and M.J. allege was served to the Landlord.

Based on the uncertainty and inconsistent testimony from K.C. and M.J. of what documentary evidence was actually included in the Notice of Hearing packages, I am not persuaded, on a balance of probabilities, that the Tenants served this text message evidence to the Landlord. The importance of this document is that P.H. advised that he was only aware of one issue that was brought forth in the Tenants' Application, and that this issue pertained to a complaint of a cat urine odour that was emanating into the rental unit. However, in the Tenants' additional evidence served to the Landlord on February 10, 2023, the Landlord was only made aware of other additional issues that the Tenants were seeking remedy for. As such, he was only prepared to respond to the cat urine odour issue, and not the other concerns that were brought to the Landlord's attention just prior to the hearing.

K.C. and M.J. both allege that the description in the Tenants' Application pertain to more than just a cat urine odour, and that the text message chain, that was allegedly included in the Notice of Hearing packages, elaborated on other concerns they had with respect to the rental unit. It is their position that the Application also speaks to a loss of quiet enjoyment that related to a different issue, and that even if the Landlord only believed that this Application was solely related to the problem with the cat urine odour, P.H. was still aware, through interactions with the Tenants, of their other complaints. As such, this hearing should still be permitted to proceed regarding all of their concerns. M.J. acknowledged that at no point did they amend their Application to specifically highlight any other concerns that they had.

Firstly, I find it important to note the following descriptions of the Tenants' claims in their Application. These are reproduced below exactly as submitted by the Tenants:

> 01 - I want to reduce rent for repairs, services or facilities agreed upon but not provided
>
> $5,000.00
>
> **Applicant's dispute description**
>
> The rental unit is well-sealed regarding the outside walls but no such effective seal exists between the walls of the tenant's unit and the other tenant's rental unit. It's a low-energy build and while the ventilation system is on it pulls air from the other tenant's rental unit into the applicant's rental unit. The smell is that of feline urine as the other tenants keep their litter boxes close to the unsealed walls.
>
> 02 - I want repairs made to the unit, site or property. I have contacted the landlord in writing to make repairs but they have not been completed
>
> **Applicant's dispute description**
>
> The rental unit is well-sealed regarding the outside walls but no such effective seal exists between the walls of the tenant's unit and the other tenant's rental unit. It's a low-energy build and while the ventilation system is on it pulls air from the other tenant's rental unit into the applicant's rental unit. The smell is that of feline urine as the other tenants keep their litter boxes close to the unsealed walls. Additionally, the smell of the urine has made living in the rental difficult.
>
> 03 - I want the landlord to comply with the Act, regulation and/or the tenancy agreement
>
> **Applicant's dispute description**
>
> The smell of the cat urine has resulted in loss of "quiet enjoyment" of the rental unit. The smell of the urine is all pervasive and making our clothes and furniture stink of cat urine. This has been an ongoing issue since the beginning of the tenancy. This has been addressed by the tenants to the Landlord and to the Landlord by the tenant's Advocate but the landlord told the tenants that if they did not like the smell they could move out.

When reviewing the descriptions on the Tenants' Application, it is clear to me that their complaints pertain to an issue of a cat urine odour solely. While there are references to the quality of the seals of the rental unit, the ventilation system, and a loss of quiet enjoyment, there is little, if any, indication in these descriptions that directly introduce

other concerns in the rental unit. As such, I find it reasonable to conclude that this matter of the cat urine odour was what was presented to the Landlord when the Notice of Hearing packages were delivered. As I am not satisfied that there was any documentary evidence served to the Landlord with the Notice of Hearing packages that informed the Landlord that any other issues would be introduced, I accept P.H.'s testimony that the Landlord had only prepared to respond to the issue of the cat urine odour.

While I acknowledge that the Tenants may have had concerns with a host of other issues during the tenancy, and that the Landlord may have been aware of those issues, I do not find that these were brought to the Landlord's attention to be addressed as part of this dispute, other than by being included in the Tenants' documentary evidence that was served to the Landlord on February 10, 2023. As noted in the hearing, the Tenants could have amended their Application in advance of the hearing to adequately inform the Landlord that there were other issues that required remedy, thereby providing the Landlord with a fair opportunity to respond. However, I do not accept that attempting to introduce other issues by way of their documentary evidence submissions, which were served at virtually the last minute, to be appropriate.

While this may not have been an intentional act by the Tenants, given that the majority of their evidence was served to the Landlord so close to the timeframe deadline established by Rule 3.14 of the Rules of Procedure, I find that this reasonably supports a conclusion that this may have been a deliberate attempt to prejudice the Landlord. Regardless, as I was satisfied that the only issue that was sufficiently brought forth by the Tenants pertained to a cat urine odour, the parties were informed that this would be the sole issue that would be addressed in the hearing.

I note that the there was much uncertainty and inconsistency provided from K.C. and M.J. regarding what documents were actually served to the Landlord, and a significant amount of the hearing time was dedicated to attempting to get clear answers to this somewhat disorganized and haphazard Application. Given that so much of the one-hour hearing time had already been utilized due to this, and as there would not likely be sufficient time to obtain satisfactory submissions from both parties with respect to the cat urine odour issue, settlement discussions were entertained in order to attempt to find some meaningful outcome to this dispute. However, these attempts ultimately proved unsuccessful.

As we had already exceeded the one-hour hearing time, and as the Tenants did not want to proceed solely on the cat urine odour issue, K.C. advised that they would prefer to withdraw their Application and reapply properly for the entirety of their claims.

I find that the Tenants' request to withdraw the Application in full does not prejudice the Landlord. Therefore, the Tenants' request to withdraw the Application in full was granted. I note that this Decision does not extend any applicable timelines under the *Act*.

As the Tenants were not successful in this Application, I find that the Tenants are not entitled to recover the $100.00 filing fee paid for this Application.

Conclusion

The Tenants have withdrawn their Application in full. I have not made any findings of fact or law with respect to the Application.

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