Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, RR, RP, LAT, OLC, FFT, CNR, MNDCT, FFT

Introduction

This hearing dealt with cross-applications filed by the Tenants. On January 9, 2023, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking a rent reduction pursuant to Section 65 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, seeking authorization to change the locks pursuant to Section 31 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 January 17, 2023, the Tenants made another Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to Section 46 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing; however, the Landlord did not attend at any point during the 68-minute teleconference. At the outset of the hearing, I informed the parties 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.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 12:08 PM. Only the Tenants dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that I was the only other person who had called into this teleconference.

Tenant G.S. advised that the first Notice of Hearing and evidence package was served to the Landlord's address on the tenancy agreement by registered mail on January 11, 2023, and that it was received by the Landlord on January 13, 2023 (the registered mail tracking number is noted on the first page of this Decision). She referenced a screenshot of the tracking history to confirm service, and that this package was signed for. However, she advised that they did not serve their digital evidence to the Landlord. Based on this undisputed testimony, I am satisfied that the Landlord has been duly served the Tenants' first Notice of Hearing and evidence package, with the exception of the Tenants' digital evidence. As such, I have accepted only the Tenants' documentary evidence and will consider it when rendering this Decision.

She then advised that their second Notice of Hearing and evidence package was served to the Landlord by email on February 12, 2023, pursuant to a Substituted Service Decision dated February 9, 2023. However, they did not submit any proof of service of this package in accordance with the instructions on the Substituted Service Decision. Regardless, based on this undisputed, solemnly affirmed testimony, I am satisfied that the Landlord has been duly served the Tenants' second Notice of Hearing and evidence package. As such, I have accepted the Tenants' documentary evidence and will consider it when rendering this Decision.

At the outset of the hearing, as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, the parties were advised that this hearing would primarily address the Notice, and the other claims would be dismissed with leave to reapply. However, as will be addressed below, there were concerns regarding the numerous claims made by the Tenants. Regardless, the Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. 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.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to a repair Order?
- Are the Tenants entitled to recover the filing fees?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenants advised that the tenancy started on December 1, 2022, that rent was established at $3,000.00 per month, and that it was due on the first day of each month. As well, a security deposit of $3,000.00 was also paid. The Landlord is cautioned that pursuant to Section 19 of the *Act*, he may not accept a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent, and that if he does so, the Tenants may deduct the overpayment from rent or otherwise recover the overpayment. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Tenants then advised that the Landlord served the 10 Day Notice to End Tenancy for Unpaid Rent by hand on January 13, 2023. However, they claimed that they deducted the overpayment of their security deposit from January 2023 rent, that they paid the difference owing in their rent, and that this Notice was thus invalid. As well, they testified that they have paid their rent in full since service of the Notice. Regardless, as the burden is on the Landlord, who served the Notice, to substantiate

why it was served, as the Landlord did not attend the hearing, the 10 Day Notice to End Tenancy for Unpaid Rent dated January 12, 2023, is cancelled and of no force or effect.

As per above, the Tenants were advised that pursuant to Rule 2.3 of the Rules of Procedure, I had the discretion to sever and dismiss unrelated claims. As the Notice had already been addressed, the parties were advised that the next most pressing issue would appear to be that of repairs.

G.S. then listed the five, following, relevant repair issues that pertained to their Application: the dishwasher, the showers, the oven and stove, the fridge, and the low water pressure in the rental unit. However, she then stated that the first four matters had already been addressed by the Landlord. Given that these first four repairs had already been initiated by the Landlord, the Tenants were informed that I could not Order the Landlord to commence repairs on items that have already been addressed.

The only remaining repair issue was that of the low water pressure; however, G.S. requested that the matter of monetary compensation be addressed instead. As such, this aspect of their first Application was addressed. However, I find it important to note that Section 59(2) of the *Act* requires the party making the Application to detail the full particulars of the dispute.

The Tenants applied for a Monetary Order for compensation in the amounts of $3,000.00 and $4,000.00, but they did not complete a Monetary Order Worksheet breaking down how these amounts were calculated. Moreover, they claimed that they did not know how to put a monetary value on the loss that they suffered, that they just chose these figures as estimates, and that they hoped that I would be able to establish how much of a loss they suffered.

The Tenants were advised that they must outline to the other party precisely how much loss they believe they have suffered so that the other party can understand what is being alleged, and has an opportunity to defend themselves appropriately against said allegations. I can only surmise that the Tenants would not appreciate receiving an Application from the Landlord for compensation where the Landlord requested remedy on possibly inflated figures for damage, and then attended the hearing without documentary evidence to corroborate those specific losses, expecting the Arbitrator to then work out how much, if anything, should be appropriately compensated. This is exactly the situation that the Tenants have created with the manner that they have constructed their Application.

Given that I do not find that the Tenants have made it abundantly clear to any party that they are certain of the exact amounts they believe are owed by the Landlord that is commensurate with the loss they suffered, I find that the Tenants have not outlined their claims precisely, with clarity. As such, the Tenants were advised that they did not adequately establish a claim for a Monetary Order in accordance with Section 59(2) of the *Act*. Section 59(5) allows me to dismiss this Application because the full particulars are not outlined. For these reasons, I dismiss the Tenants' Application for monetary compensation with leave to reapply.

At this point, the Tenants continued to express their dissatisfaction with not being able to proceed with their claims for monetary compensation, and they were continually explained why it was unfair and prejudicial to the other party to address this matter. The Tenants were reminded that there was little hearing time left, and that it would be beneficial to use what little hearing time remained to address one outstanding matter so that a tangible result on something in their Application could possibly be obtained. However, Tenant M.K. stated that there were no other matters in their Application to make submissions on. The Tenants were again reminded that there was the matter of the repair Order regarding the low water pressure that was still outstanding, but the Tenants continued to waste their hearing time belabouring their frustration at having to re-apply for monetary compensation.

The Tenants then eventually, and reluctantly, made fairly indifferent submissions regarding the low water pressure in the rental unit. G.S. testified that the water pressure is low when showering, that it is "not terrible", but that it is also "not great". M.K. then advised that the water pressure was low "sometimes" since the start of the tenancy and that they informed the Landlord about this. However, the Landlord has done nothing to address this matter other than to call the strata. He then testified that the strata had changed the water pressure in the rental unit, and that it is his belief that this water pressure should be standardized. The Tenants did not have any further submissions on this matter and did not direct me to any documentary evidence that supported their submissions of low water pressure in the rental unit.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenants must repair any damage to the rental unit that is caused by their negligence.

With respect to the matter of the low water pressure, I find it important to note that the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, while the Tenants advised that there was a problem with the water pressure, they acknowledged that this matter was addressed by the strata at some point. While it is possible that the water pressure in the rental unit is still not satisfactory, I do not find that the Tenants have substantiated this with documentary evidence.

However, given the Tenants' submissions and documentary evidence that the Landlord has failed to address other repair requests in a reasonable timeframe, the Landlord is cautioned that if there is indeed a low water pressure issue, the Landlord is required to rectify this in a realistic timeframe after being informed of the problem by the Tenants. As a note, should the Landlord elect not to manage their tenancies in a manner in accordance with the *Act*, the Landlord could possibly put themselves in the position of having to financially compensate the Tenants for this negligence.

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

As the Tenants were successful in their second Application, I find that the Tenants are entitled to recover the $100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenants to withhold this amount from the next month's rent in satisfaction of this claim.

Conclusion

Based on the above, the Tenants' claims for monetary compensation on their first Application, and any other matters not addressed above, are dismissed with leave to reapply.

In addition, on their second Application, I hereby Order that the 10 Day Notice to End Tenancy for Unpaid Rent dated January 12, 2023, to be cancelled and of no force or

effect. This tenancy will continue until otherwise ended in accordance with the Act. The Tenants are permitted to withhold the $100.00 filing fee from the next month's rent in satisfaction of this claim.

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: May 11, 2023

Residential Tenancy Branch