



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding CAPREIT LIMITED PARTNERSHIP and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RPP, FFT

Introduction

This matter was adjourned to written submissions following a hearing on May 23, 2023 regarding the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- compensation of \$3,000.00 for monetary loss or money owed by the Landlord pursuant to section 67;
- an order for the Landlord to return the Tenant's personal property seized or received by the Landlord contrary to the Act or the tenancy agreement pursuant to section 65(1)(e); and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

By an interim decision dated May 23, 2023 (the "Interim Decision"), I adjourned this matter to written submissions with a deadline of May 26, 2023. This decision should be read together with the Interim Decision.

Following the hearing on May 23, 2023, the parties did not submit further written submissions or indicate that they had reached a settlement. As such, this decision is based on evidence previously submitted by the parties and their testimonies at the original hearing.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to an order for the Landlord to return the Tenant's personal property?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on July 1, 2021 and ended on December 27, 2022. Rent was \$1,497.12 due on the first day of the month. The Tenant paid a security deposit of \$737.50.

The rental unit is located in an apartment complex. On December 27, 2022, a fire broke out at the building. The Tenant was not allowed to return to the rental unit and the tenancy ended.

The Tenant stated that he lost all his clothing and personal belongings in the apartment. According to the Tenant, he stayed with his son for the first four weeks, then purchased a camper where he continues to reside.

The Tenant submitted a letter from the Landlord dated January 16, 2023 into evidence. This letter indicates that:

- As a result of the fire on December 27, 2022, there was fire, smoke, and water damage in the rental unit which has created a significant risk of exposure to hazardous materials, including asbestos. The hazardous materials have contaminated the Tenant's possessions. For safety reasons and to limit the spread of hazardous materials, the Tenant was not permitted to return to the rental unit or retrieve belongings.
- The Landlord offered to pay for its remediation contractor to find and clean up to five hard surface items (e.g. jewelry, passports etc.) for the Tenant. Soft surface items (e.g. beds, couches, clothing) could not be safely cleaned to ensure all hazardous materials were removed.
- For the remainder of the Tenant's belongings, the Landlord suggested the Tenant to seek compensation through tenant insurance, hire the Landlord's remediation contractor to salvage items at the Tenant's cost, or have the Landlord dispose of everything free of charge.

The Tenant submitted a contents estimate dated January 19, 2023 from the Landlord's remediation contractor. This estimate indicates that the cost for remediating the rental unit was anticipated to be \$2,982.53 including GST.

The Tenant stated that he did not keep pictures of the apartment. The Tenant submitted a word document with a list of belongings that he had in the unit. This list includes items such as furniture, appliances, kitchen utensils, exercise equipment, clothing, food, toiletries, and personal memorabilia.

The Tenant disagreed with the Landlord's letter and did not think it was correct for the Tenant to have to pay to retrieve his belongings. The Tenant acknowledged that he did not have tenant's insurance.

According to the Tenant, the source of the fire was a neighbour's unit.

In response, SG confirmed that the fire originated from the suite next door. SG stated that the fire was caused by the tenant next door smoking.

The Landlord submits that due to extensive damage and contamination resulting from the fire, certain units including the rental unit were deemed uninhabitable. The Landlord submits that many belongings were contaminated with asbestos. The Landlord provided a report from its hazmat consultant dated February 1, 2023, which found asbestos fibers on the floors in all affected units. This report recommended that only qualified asbestos abatement contractors be allowed to clean and retrieve contents before they are moved to a clean area for the tenants to claim.

The Landlord's evidence also includes a letter to the Tenant dated March 13, 2023, in which the Landlord offered to decontaminate the Tenant's hard surface items and dispose of the remaining items at the Landlord's cost. SG explained that the Tenant did not agree to the Landlord's offer but wanted monetary compensation. The Landlord provided a copy of the email correspondence between the Tenant and the Landlord's legal counsel.

The Landlord argues that the Tenant did not have tenant insurance to cover the loss of his damaged belongings, even though tenant insurance is a requirement of the lease agreement.

Analysis

1. Is the Tenant entitled to compensation for monetary loss or other money owed?

Section 67 of the Act states that 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.

According to Residential Tenancy Branch Policy Guideline 16. Compensation for Damage or Loss, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

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

In this case, I find the parties agree that the fire was caused by the next door tenant. I find there is insufficient evidence that the fire was caused by the Landlord's failure to comply with the Act, the regulations, or the parties' tenancy agreement. Therefore, I do not find the Tenant to have established that he suffered damage or loss as a result of a breach by the Landlord.

I note that by not having tenant insurance, the Tenant did not comply with section 20 of the parties' tenancy agreement, which states in part as follows:

LIABILITY AND INSURANCE: The tenant agrees to carry sufficient insurance to cover his property against loss or damage from any cause and for third party liability. [...] The tenant will be responsible for any claim, expense, or damage resulting from the tenant's failure to comply with any term of this Agreement [...]

Based on the foregoing, I dismiss the Tenant's claim for compensation under section 67 of the Act without leave to re-apply.

2. Is the Tenant entitled to an order for the Landlord to return the Tenant's personal property?

Under section 65(1)(e) of the Act, if the director finds that a landlord has not complied with the Act, the regulations, or a tenancy agreement, the director may order that personal property seized or received by a landlord contrary to the Act or a tenancy agreement must be returned.

I accept the Landlord's evidence that the Tenant's belongings are contaminated with hazardous materials, including asbestos, and that it is unsafe for the Tenant to retrieve the items personally. Furthermore, I find the Landlord offered to have its remediation contractor clean and salvage hard surface items that are capable of being decontaminated, at the Landlord's cost, but this offer was refused by the Tenant.

Under these circumstances, I do not find the Landlord to have seized or received the Tenant's personal property contrary to the Act or the parties' tenancy agreement.

The Tenant's claim for the return of his personal property under section 65(1)(e) of the Act is dismissed without leave to re-apply.

3. Is the Tenant entitled to recover the filing fee?

The Tenant has not been successful in this application. I decline to award reimbursement of the Tenant's filing fee under section 72(1) of the Act.

Conclusion

This application is dismissed in its entirety without leave to re-apply.

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: June 21, 2023

Residential Tenancy Branch