Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDCT, FFT**

Introduction
This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "*Act*") for:

- A monetary order for damages or compensation pursuant section 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the landlord and the tenant attended the hearing. As both parties were present, service was confirmed. The parties each confirmed receipt of the application and evidence. Based on the testimonies I find that each party was served with these materials as required under RTA sections 88 and 89.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an affirmation to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided
Is the tenant entitled to compensation?
Can the tenant recover the filing fee?

Background and Evidence
At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenancy began on April 1, 2021 with rent set at $1,850.00 per month payable on the first day of the month. The security deposit and pet damage deposit were returned to the tenant at the end of the tenancy, June 30, 2022.

The tenant seeks compensation as 25% of her rent returned to her from August 1, 2021 to the end of February, 2022; plus 50% of her rent returned from March 1, 2022 to the end of the tenancy, June 30, 2022. The tenant testified that there were a total of 9 leaks in the unit during the tenancy and the tenant described the unit as unfit to live during the tenancy. The reason for the two different reductions in rent sought is because the floors in the unit were ripped out in late March, 2022, causing greater disruption to her life.

The tenant testified that she was flexible with the landlord and worked with her to allow tradespeople into the unit to fix the leaks and the walls, however upon reflection she found the entire tenancy to be dehumanizing and unfair. The tenant testified that holes made in the walls and ceiling were not repaired to a good standard and the floors were ripped out and replaced by cardboard, making it impossible to keep clean. The tenant testified she understood that the leaks were beyond the landlord’s control, but she seeks compensation because she had to live in a construction zone.

The landlord testified that the building was constructed with faulty plumbing and that it required a full replacement of the pipes. The landlord acknowledges that there were 8 or 9 separate pinhole leaks to the pipes which affected the walls and flooring. The landlord argues that each time a leak was discovered in the walls or ceiling, the holes cut into the drywall were temporarily repaired with corrugated plastic. The holes could not be drywalled over because the plumber needed easy access to the leaking pipes.

The flooring in the unit was ripped out because her insurer and restoration contractor advised her to do so to prevent mold from growing. It was for the tenant’s health and safety that the flooring was removed and in it’s place the flooring company laid down “ram board”, a durable cardboard flooring. The landlord had to await strata approval to put down new flooring and there were delays in getting the approval due to members of strata council not being available and on vacation.

In November 2021, the tenant requested to break the fixed term tenancy agreement and move out on January 1, 2022. The landlord agreed to this, however the tenant changed her mind and decided to remain living in the rental unit until the end of June 2022, knowing it had the leaks.

The landlord compensated the tenants with a $200.00 per month rent reduction for the 3 months the tenants had the flooring removed. Further, the landlord paid the tenant's pet fee of $100.00 and the landlord gave the tenant $150.00 in gift cards to the local pharmacy.

Analysis

Section 7 of the Act states: 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.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

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.

[the 4-point test]

The first question is whether the landlord failed to comply with the Act, regulations, or tenancy agreement. I have insufficient evidence to satisfy me she has. The leaks in the pipes were not caused by anything the landlord did. It was unfortunate for both the tenant and the landlord that the building was constructed with faulty plumbing; however I cannot attribute this defect in construction to the landlord or find her at fault for causing the leaks or failing to take action when she was notified about them. I find she acted sensibly and prudently, trying to make the rental unit as livable as possible for the tenant, given the circumstances.

I accept that the landlord was prevented from re-drywalling the holes in the walls and ceiling because the plumber still required access to the pipes and that there was to be a building-wide retrofit of the pipes. I have also read the emails provided by the landlord to the strata and I find the landlord took appropriate steps to ensure the repairs were done as quickly as possible, given that the pipe repairs were the responsibility of the strata and not the landlord.

Residential Tenancy Policy Guideline 21 states:
An owner has no power to do work on the common areas of the development, save and except for areas of exclusive use common property or limited common property as required by the by-laws. The dividing line between the strata lot and the common areas is usually the mid point of the exterior walls of the strata lot. Any repairs such as the repair of water leaks originating in the common areas is the responsibility of the strata corporation.

Point 3 of the test (above) requires that the applicant/tenant provide sufficient evidence to prove the amount of or value of the damage or loss. The tenant seeks 25% rent return from August 2021 and 50% rent return from March 2022 onward but did not provide any reasoning for the amount sought. The tenant did not provide similar cases where similar claims were granted or any other evidence to show why 25% or 50% of the rent she paid is reasonable. The landlord testified that the tenants retained full use of the rental unit during the tenancy and the tenant did not dispute that fact.

Further, in the application for dispute resolution, the tenant seeks $7,585.00 but in the monetary order worksheet, she seeks $6,538.00. When I asked the tenant why there is a discrepancy, the tenant stated that it was for her goods damaged due to the pipe leaks. The tenant provided no evidence to support this, and I find insufficient evidence to justify both this claim and the claim for a return of rent at any percentage.

While her enjoyment of the unit may have been diminished due to the corrugated plastic covering the holes and the Ram board as flooring, I do not find this to be so significant that the tenant should have 25 or 50 percent of her rent returned to her. Once again,

the leaks that caused the disruption to the tenancy was not the fault of the landlord; it was beyond the landlord's control to rectify the situation. The landlord compensated the tenant with a $200.00 per month rent reduction for April, May and June 2022 ($600.00 in total), $150.00 in gift cards and paying a $100.00 pet fee to the strata on behalf of the tenants. I find this adequately compensates the tenants for the disruption they had during the tenancy, even though the disruption was not caused by any breach of the Act, regulations or tenancy agreement by the landlord.

Lastly, the evidence shows that in November, 2021 the tenants sought to end the tenancy before the date specified in the fixed term tenancy and the landlord was agreeable to the tenant ending the fixed term tenancy early, without penalty. This would have been an example of the tenant mitigating the loss by moving out. Despite this, the tenant chose to cancel her notice to end the tenancy and continue living in the unit, knowing it was deficient. It would be unreasonable for me to award compensation to the tenant for continuing to reside in the unit she knew was unsuitable after the tenancy ended. I find the tenant had the opportunity to minimize the damage or loss by moving out with the landlord's consent but chose to stay, thereby failing to mitigate the damage. (point 4 of the 4 point test).

Consequently, I dismiss the tenant's application without leave to reapply.

As the tenant's application was not successful, the tenant is not entitled to recovery of the $100.00 filing fee for the cost of this application.

Conclusion

The 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: June 05, 2023

Residential Tenancy Branch