

DECISION

Introduction

This hearing was a cross application and dealt with the Landlords' October 31, 2022, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- An order of possession from the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act
- A monetary order for unpaid rent
- Authorization to recover the filing fee for this application from the tenant under section 72 of the Act

This hearing also dealt with the tenants' October 13, 2022, application for dispute resolution under the Act for:

- Disputing a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities
- Compensation for monetary loss or other money owed
- Authorization to recover the filing fee for this application from the landlord under section 72 of the Act

Service of Notice and Evidence

The parties acknowledged service of all relevant documents.

Preliminary Matters

The originally assigned Arbitrator twice adjourned the hearing of this matter on March 1, 2023, and April 25, 2023. Interim Decisions were issued after each hearing and parties were provided with specific instructions for serving evidence. The originally assigned Arbitrator was no longer available to complete the scheduled August 3, 2023, reconvened hearing, and so parties were informed that I would be hearing their applications as a new matter.

The parties agreed that they settled the matter of when the tenancy would end during their previous hearing that occurred on November 17, 2022. This hearing was scheduled in response to the landlord serving notices to end tenancy. The parties agreed that the tenancy ended on November 27, 2022.

I have amended both applications under Rule of Procedure 4.2 to remove claims regarding a 10-day notice to end tenancy because the tenancy ended many months ago by settlement of the parties.

The landlord stated that they wish to withdraw their claim for compensation for unpaid rent and payment of the filing fee. Consequently, I amended their application to remove these claims.

Issues to be Decided

- Is the tenant entitled to compensation for monetary loss or other money owed?
- Is the tenant entitled to recover the filing fee for this application from the landlord under section 72 of the Act?

Background and Evidence

The parties agreed there was a fixed term six-month written tenancy agreement. This agreement then became month-to-month. The tenancy started on November 27, 2021, and ended on November 27, 2022. Monthly rent was set at \$2,100.00 due at the first of the month, and a security deposit of \$1,050.00 was collected. The parties agreed that the full value of this security deposit has been returned to the tenant.

The parties agreed the rental unit was a one-bedroom condo that was occupied by the tenant, their spouse, and two children. The parties also agreed that the residential property was built in approximately 2005.

The tenant provided a Monetary Order Worksheet dated April 4, 2023, outlining their claims for compensation for loss of enjoyment and emergency repairs. This worksheet identifies 9-line items, totaling a cumulative loss of \$34,175.00. I confirmed that both parties had access to this document.

Each line item was reviewed during the hearing, with equal opportunity given to the landlord and tenant to provide relevant evidence and testimony. It soon became evident that the tenant's claims clustered around three major issues that were also identified by the landlord. These included:

- 1) The gas fireplace
- 2) The mirror doors
- 3) Communication between the landlord and tenant

Fireplace

The landlord testified that they received notice from the tenant on August 1, 2022, that the gas fireplace was not working. The landlord stated that they arranged for a service technician to attend to the property on August 19, 2022. However, the landlord then canceled this service request after the tenant informed them on August 19, 2022, that

they already had the fireplace inspected. The tenant then had the fireplace repaired in September 2022 and withheld the amount paid, from rent owing to the Landlord for October 2022.

The landlord withdrew their original claim for compensation for missing rent because, they would have paid the same amount to have the gas fireplace repaired.

The tenant claimed that the non-functioning fireplace was an “emergency issue” because heat was needed in the ninth-floor apartment. The tenant was also concerned about gas leaking into the rental unit from the fireplace. The parties agreed that the gas supply to the fireplace in the rental unit was quickly turned off by the Strata when concerns with the fireplace were first reported. The landlord emphasized that this all happened in August, the hottest month of the year.

The tenant made the following financial claims:

- #2 Loss of Enjoyment Fireplace Repairs = \$1,900.00
- #4 Loss of Enjoyment – Time and Effort to Repair = \$4,000.00
- #5 Loss of Enjoyment – Safety Issue = \$800.00

Mirror Doors

The landlord testified that they were notified on September 24, 2022, that the tenant had an issue with a set of mirrored closet doors in the rental unit. The landlord stated that when they reached out on September 27, 2022, to coordinate repair, the tenant indicated that the problem had already been resolved. The tenant then withheld monies paid to resolve this issue, from rent owed to the landlord for October 2022.

The landlord withdrew their original claim for compensation for missing rent because, they realized that they would have paid the same amount to have the mirrored closet doors repaired.

The tenant provided a photo of the mirrored closet door in question to highlight how it had come off its track. The tenant stated that this door represented a safety hazard to their children and needed immediate repair. The landlord countered this argument and stated that the mirrored section could have been easily removed and placed elsewhere if the tenant was concerned.

The tenant made the following financial claims:

- #3 Loss of Enjoyment – Mirror Door Repairs = \$900.00

Communication

The parties are Mandarin speakers. The landlord stated that they requested the parties communicate via Phone or WeChat to ensure the landlord had timely access to the tenants' concerns. The tenant stated that the landlord made unreasonable requests and prevented the tenant from communicating their concerns through email. The tenant stated that it is important to communicate via email because email allows "RTB approved tracking" of landlord and tenant communications. The landlord stated that they continued to respond to the tenant's emailed concerns.

The tenant also testified at length to perceived slander from the landlord as well as lies allegedly told by the landlord to the RTB. However, the tenant failed to identify a specific violation of the Act that was associated with their claims. The tenant stated that the landlord did not respect their newcomer status, or health challenges. The landlord denied the tenants various claims and stated that they did their best to respond to the tenants' various claims and requests for support.

The tenant made the following financial claims:

- #1 Loss of Enjoyment of my right as a tenant = \$575.00
- #6 Loss of Enjoyment Slander = \$2,000.00
- #7 Loss of Enjoyment – Eviction lies = \$6,000.00
- #8 Loss of Enjoyment – Eviction and Repair Lies = \$9,000.00
- #9 Loss of Enjoyment – Continued Falsehoods = \$9,000.00

Analysis

The standard of proof in a dispute resolution hearing is on the balance of probabilities. The tenant in this dispute is required under Rule of Procedure 6.6 to establish on the balance of probabilities that they are entitled to compensation for loss. According to Residential Tenancy Branch Policy Guideline 16, the following is to be considered when assessing a claim for compensation:

- Did a party to the tenancy agreement fail to comply with the Act, regulation or tenancy agreement?
- Did loss or damage result from this non-compliance?
- Did the party who suffered the damage or loss prove the amount of or value of the damage or loss?
- Did the party who suffered the damage or loss act reasonably to minimize that damage or loss?

Specific to this dispute and the three issues raised, I find that the tenant failed to establish on a balance of probabilities that they are entitled to compensation because they failed the first step of the test outlined above. I find that the landlords did not contravene any section of the Act.

I am satisfied that the landlords maintained and upheld their obligations under 32(1) of the Act which requires the following:

32 (1)A landlord must provide and maintain residential property in a state of decoration and repair that

(a)complies with the health, safety and housing standards required by law, and

(b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Likewise, I find that the tenants did their best to maintain their obligations under 32(2) of the Act which reads as following:

32(2)A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Regarding the tenants' claims that the fireplace and the mirror closet doors represented necessary emergency repairs, I am not satisfied that their claims represented emergencies as defined under the Act. The gas fireplace stopped working during the summer months in August and the gas was turned off by the Strata as soon as it was reported.

Regarding the glass doors. I also find that their repair did not meet the definition of an emergency under the Act. I agree with the landlord that the tenant could have easily picked up the mirrored closet door and placed it out of the way until it could be repaired.

I therefore dismiss the tenants' application and I do not give leave to re-apply.

Is the tenant entitled to recover the filing fee for this application from the landlord?

The tenants were not successful in their application. I dismiss their request for authorization to recover the filing fee from the landlord under section 72 of the Act. I do not give leave to reapply.

Conclusion

The tenants' application is dismissed in its entirety, 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: August 16, 2023

Residential Tenancy Branch