



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, OLC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on September 16, 2022, wherein the Tenant sought the following relief:

- an order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement;
- an Order that the Tenant be permitted to reduce their rent for services or facilities not provided; and
- monetary compensation from the Landlord in the amount of \$5,700.00.

The hearing of the Tenant's Application was scheduled for teleconference on February 3, 2023, June 15, 2023 and August 15, 2023. The hearing on February 3, 2023 was adjourned to permit the exchange of evidence between the parties. The hearing reconvened on June 15, 2023. At that time the Tenant requested an adjournment as her Advocate, L.H., was unable to attend with her. The matter was then adjourned to August 15, 2023 at which time both parties called into the hearing as well as the Tenant's Advocate and the Landlord's friend M.S.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the

Residential Tenancy Branch Rules of Procedure. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Relief Sought

At the outset of the original hearing the parties confirmed the Tenant had vacated the rental unit on October 30, 2022 pursuant to a settlement agreement. The file number for that matter is included on the unpublished cover page of this my Decision. AS the tenancy ended, the Tenant's request for an order that the Landlord comply with the legislation was no longer relevant; accordingly, I dismiss that claim without leave to reapply.

Preliminary Matter—Related Files

The parties attended a further hearing before the branch on applications filed by both the Landlord and Tenant, which concluded on September 15, 2023 (the file number for those matters is included on the unpublished cover page of this my Decision). Those matters also resolved by agreement. Pursuant to paragraph 4 of their agreement, the parties specifically provided that their agreement did not affect the outcome of the matter before me:

4. The parties will accept whatever Decision is made in the Tenant's Application from a reconvened hearing on August 15, 2023. The relevant file number is noted on the first page of this Decision.

Preliminary Matter—Date and Delivery of Decision

The hearing of the Tenant's Application concluded on August 15, 2023. This Decision was rendered on September 20, 2023. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30-day period.

Issue to be Decided

Is the Tenant entitled to monetary compensation from the Landlord, including a retroactive rent reduction?

Background and Evidence

This tenancy began August 15, 2020 and ended on October 1, 2022. Monthly rent was \$1,200.00 per month.

In the hearing before me the Tenant stated that she sought \$500.00 from the Landlord for the Landlord's lack of care regarding the rodent infestation. The Tenant stated that she paid \$500.00 to her friend L.F., who "does this on the side", to deal with the rodents and to spray for spiders and bugs etc. The Tenant claimed that she has a receipt for this, but did not submit it in evidence because it is "buried in her storage".

The Tenant also claimed \$5,200.00 as a rent reduction for the winter months she resided in the rental unit in 2020 and 2021. She clarified during her testimony that she was claiming the sum of \$300.00 per month as she stated the "stench" coming out of the furnace ducts was such that she could not turn the heat up and she suffered from illness as a result. She stated that she purchased space heaters and a fireplace to deal with the lack of heat.

The Tenant further stated that the Landlord didn't seem to care. She stated that in the fall of 2021 the Landlord sent someone to look at the furnace ducts, but this person refused to do it because they stunk and stated that they needed to be cleaned sanitized. The Tenant stated that when she told the Landlord the Landlord responded that was not what she was told.

The Tenant's friend, L.H., also testified. She stated that she was at the rental unit at the material time and observed how cold her rental unit was, how hard the Tenant tried to communicate with the Landlord without any response and the effect on the Tenant's health. L.H. also stated that she saw "black mold" and inappropriate molding in the bathroom.

L.H. also testified that she could smell the odour from the ducts. She said she looked at the furnace and noticed how dirty the filter was and claimed it was so filthy and caked on that she wouldn't touch it without gloves or a mask. She confirmed that she did not

observe the Tenant replacing the filter, however she did witness the Tenant telling the Landlord it needed to be addressed

L.H. stated that she was unaware of when the furnace was installed or when it was serviced.

In response to the Tenant's claim the Landlord testified as follows.

The Landlord stated that the furnace was installed in 2019. In support she provided an invoice for the purchase of the furnace at that time. She noted that it is different from a normal furnace as it is smaller and is an enclosed system and that there is no filter due to the heating duct system. She also testified that it was serviced in November of 2021 and there were no concerns noted at that time. In support she provided an invoice from the company who performed the service on the furnace. The Landlord stated that the company who arrived to service the system did not tell her the ducts were too filthy to be cleaned and in fact noted on their invoice that the system was running well. The Landlord also stated that the Tenant refused entry on two occasions, namely: October 27, 2021 and December 2, 2021. In support she provided copies of communication with the Tenant regarding the date for the inspections and service and the Tenant's failure to permit access at the time.

In terms of the rodents and bugs/spiders the Landlord claimed that she was unaware the Tenant had any such issues nor that she had paid the sum of \$500.00 to address any such issues.

The Landlord's friend, M.S., made submissions on behalf of the Landlord and noted that the Tenant did not provide any evidence which would connect the Tenant's alleged health issues to anything the Landlord did or failed to do. She also noted that the \$500.00 claimed seems to be "out of the air" as the Tenant did not provide a receipt for this expense and in the event it was for insect control, it is an excessive figure.

M.S. also confirmed that the Landlord also disputed the Tenant's request for a rent reduction because she said that Landlord responded promptly every time an issue was raised. M.S. also noted that at times the Landlord was refused entry by the Tenant such that the Tenant thwarted the Landlord's attempts to address any issues with the rental unit.

M.S. further noted that there is nothing from the Tenant after October 2021 showing that she complained about any of these issues nor is there any basis for the amount of the claim. M.S. submitted that the \$5,200.00 figure is again “a number picked out of the air” and bears no relation to reality.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, Tenant has the burden of proof to prove her claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 32 of the *Act* mandates the Tenant’s and Landlord’s obligations in respect of repairs to the rental unit and provides as follows:

Landlord and tenant obligations to repair and maintain

- 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.
- (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.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

- 8** (1) Landlord's obligations:
- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
 - (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I find the Tenant has failed to provide sufficient evidence to support her monetary claim for the cost of insect removal. The Tenant testified that she paid a friend \$500.00 to deal with insect issues at the rental unit; however, the Tenant failed to provide any receipts for this payment, nor any documentary evidence which would support her claim that she paid this amount. I am not satisfied the Tenant has proven the actual amount required to compensate her for any such payment and I therefore dismiss the Tenant's claim for \$500.00.

The Tenant also claimed the sum of \$5,200.00 as a retroactive rent reduction. She did not provide a detailed explanation for this amount, save and except to say she was seeking compensation for the "winter months in 2020 and 2021" as she claims she was not able to use the central heating system and needed to rely on space heaters and an electric fireplace during this time. When asked to clarify the sum of \$5,200.00 the Tenant stated during her testimony that she was seeking a rent reduction in the amount of \$300.00 per month which would equal nearly 18 months. It is unclear how the \$5,200.00 claim corresponds with the time period in question as it represents nearly double the winter months in those years. As the Landlord's representative aptly noted, claims for compensation must have some relation to a loss. The Tenant did not claim increased electrical utility costs, nor did she provide evidence which would support a finding that by using the space heaters and electric fireplace her monthly expenses increased. In this respect I find the Tenant has failed to prove the actual amount required to compensate her or any claimed loss.

The Tenant also stated that she did not use the central heating due to the smell from the ducts; and in support she provided photos of the ducts in the rental unit. These photos appear to be of the floor vents covering the heating ducts. The Tenant stated that she did not clean these vents or ducts. It is unclear why the Tenant would remove the vents for a photo, yet not take the time to vacuum out any debris, if in fact she was not using the system due to the smell from the system. Both the Tenant and her witness stated that they did not make any effort to clean these vents as they believed this was the Landlord's responsibility. While a Landlord is responsible for maintenance of heating systems, I find it unreasonable for a Tenant not to vacuum up debris which has fallen through heating duct floor vents. The photos submitted by the Landlord suggest that the rental unit was not kept in a clean condition and I find it more likely the debris in the floor ducts, and the smell in the rental unit, was a result of the Tenant's failure to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit as required by the Act. In this respect I find the Tenant made no effort to mitigate her losses.

As well, the evidence before me indicates the Landlord attended to the furnace maintenance having had it installed shortly before the tenancy began and serviced during the tenancy. The evidence before me confirms the unit was inspected and found to be running well without any issues. On balance I find the Landlord honoured her obligation to repair and maintain the furnace and I find the Tenant has submitted insufficient evidence to support a finding that the Landlord breached her obligations.

For the above reasons I find the Tenant has failed to prove her claim and I therefore dismiss the Tenant's claim for a retroactive rent reduction in the amount of \$5,200.00.

Conclusion

The Tenant's Application for monetary compensation from the Landlord 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: September 20, 2023

Residential Tenancy Branch