

DECISION

Introduction

This hearing dealt with the Tenant's two Applications for Dispute Resolution under the *Residential Tenancy Act* (the Act).

The Tenant's application filed on October 9, 2024 is for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order requiring the Landlord to return the Tenant's personal property under section 65 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

The Tenant's application filed on October 29, 2024 is for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an Order for the landlord to allow access to the rental unit for the tenant or the tenant's guests
- an Order for the landlord to provide services or facilities required by law
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

Landlord's Agent M.H. and Landlord's Agent D.D. attended the hearing for the Landlord.

Tenant C.W.K. attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord acknowledged service of the Proceeding Package for the Tenant's application made on October 9, 2024 and that application was duly served in accordance with the Act.

The Landlord testified that they did not receive a Notice of Dispute Resolution proceeding for the Tenant's application filed October 29, 2024. The Tenant testified that he sent both applications together in the same envelope. The Landlord wished to

proceed with the Tenant's application despite not having been served. The Landlord was aware of the Tenant's claims as the applications were similar.

I found that the Landlord and the Tenant would be prejudiced if either of the Tenant's applications were adjourned or dismissed without evidence and therefore, I allowed the hearing of both applications to continue, despite ineffective service of the Tenant's October 29, 2024 Notice of Dispute Resolution Proceeding.

Service of Evidence

The Tenant acknowledged service of the Landlord's evidence and I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

The Landlord's Agents testified that they did not receive service of the Tenant's evidence but that they were able to obtain all of the Tenant's evidence from the Residential Tenancy Branch. Under s. 71(2)(b) of the Act I find that the Landlord was sufficiently served with the Tenant's evidence.

Preliminary Matters

The Landlord submitted a copy of a tenancy agreement which states that a tenancy between the Landlord and A.B. began on November 1, 2021. This tenancy agreement indicates that C.W.K. was an occupant. The Landlord testified that A.B. was removed as a tenant on November 20, 2023. The Landlord provided a copy of a mutual agreement to end tenancy signed by A.B. on November 20, 2023. The Landlord testified, and provided evidence, that C.W.K. was added as a tenant on November 21, 2023.

I find that A.B. is not a tenant in this tenancy. A.B. did not attend the hearing.

Under sections 64(3)(a) and 64(3)(c) of the Act, I have amended the Tenant's application.

Issues to be Decided

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Is the Tenant entitled to an order requiring the Landlord to return the Tenant's personal property under section 65 of the Act?

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?

Is the Tenant entitled to an Order for the landlord to allow access to the rental unit for the tenant or the tenant's guests?

Is the Tenant entitled to an Order for the landlord to provide services or facilities required by law?

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

This tenancy between the Landlord and C.W.K. began on November 21, 2023. The monthly rent is determined as a portion of the tenant's income. The Tenant did not provide a security or pet damage deposit.

C.W.K. testified that the Landlord stole their property and C.W.K. wants this property returned. The Tenant's applications and testimony indicate they are claiming for lost wages because the Landlord removed or stole C.W.K.'s video and photography equipment. That equipment was used to generate income. C.W.K. testified that the Landlord stole his property on more than one occasion. C.W.K. provided videos and photographs of the claimed items and receipts.

The Tenant's applications and testimony indicate that they would like A.B. to come home from the hospital and be allowed access to the rental unit. The Tenant testified that the Landlord has control over this issue. C.W.K. did not provide further details or evidence of the Landlord restricting A.B. from accessing the rental unit.

The Landlord's Agent testified that A.B. was a tenant of the rental unit from November 1, 2021 until November 20, 2023. During this time, C.W.K. was an occupant of the rental unit. The Landlord provided that tenancy agreement with A.B. as evidence. The Landlord provided a document showing that A.B. was apprehended under the mental health Act in September 2023. A.B.'s support team worked with the Landlord hoping that A.B. would be able to return home to the rental unit. The support team required that the rental unit be made sanitary which required many of items in the rental unit to be removed and thrown away.

The Landlord provided a copy of a property release form which A.B. signed on October 6, 2023 which releases the Landlord from any claims for compensation in relation to the Landlord's removal and disposal of personal property. The Landlord also provided photos of the rental unit before and after it was cleaned-out.

The Landlord's Agent testified that the Landlord paid a company to clean out the rental unit on November 7, 2023. C.W.K. was detained at the time and not present for the clean-out. Before it was cleaned out, the rental unit was cluttered and unsanitary. The Landlord's employees supervised the clean-up and set aside any items that were likely

to have sentimental or monetary value. The Landlord had no way to determine which items belonged to A.B. and which belonged to C.W.K.

The Landlord testified that no video or photography equipment would have been removed. The staff would have kept anything of value. No rings would have been removed, as those may have had sentimental value and would have been stored. The photos of after the clean up show that musical instruments among other items were not thrown out.

The Landlord testified that A.B. was removed from the tenancy on November 20, 2023. A.B. is currently detained at a hospital and does not have the capacity to live in the rental unit. The Landlord stated that prospective tenants must undergo an assessment before the Landlord will rent to them.

The Landlord's Agent testified that the staff try to provide friendly helpful, courteous service. The Landlord's Agent declined to make an apology to C.W.K. as the Landlord believes they have done nothing wrong.

C.W.K. testified that he and A.B. had a business using their cameras and video equipment. C.W.K. testified that the Landlord stole their things in November 2023. C.W.K. testified that the receipts were stolen as well.

C.W.K. testified that the Landlord completed a second annual damage report which was wrong. C.W.K. wants this report erased.

The Tenant testified about A.B.'s disappearance. C.W.K. wants A.B. to come home from the hospital and stated that the Landlord is preventing this from happening.

C.W.K. believes the Landlord has set up security cameras to monitor the rental unit. No further evidence of this was provided. C.W.K. testified that there is heat gun activity in the crawlspace which has caused him injury to his foot.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Is the tenant entitled to a Monetary Order for damage or loss under the Act, regulation, or tenancy agreement?

The Tenant has claimed \$35,000.00 for lost wages as a result of the video and film equipment having been stolen.

Under sections 7 and 67 of the Act, to be awarded compensation for a breach of the

Act, the Tenant must prove:

- the Landlord has failed to comply with the Act, regulation, or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

The Tenant must first prove that the Landlord breached the Act, regulation or tenancy agreement. The Landlord argues that there is no breach of the Act, regulation or tenancy agreement because they were authorized to dispose of personal property in the rental unit, some of which may have belonged to C.W.K.

I have reviewed tenancy agreement, Mutual Agreement to End Tenancy and the Request for Addition or Deletion of Tenants And/or Occupants. I find that from November 1, 2021 until November 21, 2023, C.W.K. was an occupant of the rental unit not a tenant. The tenancy agreement that A.B. signed states that the tenant waives and releases the Landlord from any liability in connection with damage or loss of any personal property of an occupant. C.W.K. signed this agreement as an occupant.

I have reviewed the Property Release Form which states that A.B. releases and indemnifies the Landlord from any claims arising out of the removal and disposition of personal property. This document was signed on October 6, 2023, when only A.B. was a tenant under the tenancy agreement. The Landlord hired a cleaning company on November 7, 2024 to remove personal belongings from the rental unit.

As A.B. was the only tenant at the time the Property Release Form was signed, and when the personal property was removed, A.B. was the only person who was required to sign the Property Release. The Landlord obtained A.B.'s signature and approval to dispose of personal property in the rental unit. I have reviewed the photographs of the rental unit submitted by the Landlord. I accept the Landlord's testimony and evidence that the rental unit was unsanitary and had to be cleaned out.

I find that the Landlord was authorized to remove personal belongings from the rental unit on November 7, 2023. I find that the Landlord is not liable for disposing of personal property of an occupant, which is what C.W.K. was at the time.

I find that the Tenant C.W.K. has not proven that the Landlord breached the Act, regulations or tenancy agreement by disposing of the personal property of the C.W.K.

As the Landlord has not breached the Act, the Tenant's application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

Is the tenant entitled to an order requiring the landlord to return the tenant's personal property?

Section 65 of the Act states that an arbitrator may order that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned.

I accept the testimony of the Landlord that they do not have the Tenant's personal property in their possession. The Landlord cannot return property which they do not have in their possession. Further, I have already found that the Landlord was authorized to dispose of the personal property found inside the rental unit on November 7, 2023.

For the above reasons, the Tenants' application for an order requiring the Landlord to return the Tenant's personal property under section 65 of the Act is dismissed, without leave to reapply.

Is the tenant entitled to an order to allow access to or from the rental unit for the tenant or the tenant's guests?

Section 30 of the Act states that a landlord must not unreasonably restrict access to residential property by the tenant of a rental unit that is part of the residential property, or a person permitted on the residential property by that tenant. The Tenant has the burden to prove that the Landlord has prevented the Tenant of guests of the Tenant from accessing the rental unit.

I accept the testimony of the Landlord that A.B. is detained at the hospital. The Tenant did not provide evidence or specific testimony that the Landlord has prevented A.B. or any other guest from accessing the rental unit.

As the Tenant has not proven that the Landlord restricted the access of the Tenant or the Tenant's guests, the Tenant's application for an order that the Landlord allow access to the rental property for the Tenants or Tenants' guests is dismissed, without leave to reapply.

Is the tenant entitled to an order for the landlord to provide services or facilities required by law?

Section 27 of the Act states that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenants' use of the rental unit or providing the service or facility is a material term of the tenancy agreement. A landlord may terminate or restrict a service or facility that is not essential or is not a material term by giving 30 days written notice and reducing the rent in an amount that is equivalent to the reduction in the value of the tenancy.

The Tenant's application requests that the Landlord provide friendly helpful service free of threats and abuse. C.W.K. did not explain what services or facilities the Landlord failed to provide that had been agreed upon.

I find that the Tenant has not proven that the friendly helpful service that the Tenant seeks is essential to the Tenant's use of the rental unit, nor have they been agreed upon in the tenancy agreement.

I find that the Tenant has not established the Landlord has failed to provide services or facilities that are required to be provided by law or that were agreed upon. Therefore, the Tenant's application for an Order that the Landlord to provide services or facilities required by law is dismissed without leave to reapply.

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation, or tenancy agreement?

Section 62 of the act states that an arbitrator may make any order necessary to give effect to the rights, obligations, and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

The applications indicate that the Tenant sought to have the second yearly damage report revoked, to have A.B. allowed to come home from the hospital and an apology from the Landlord. During his testimony, C.W.K. did not explain what section(s) of the Act the Landlord should be ordered to comply with.

Based on the testimony of the parties and the evidence submitted, I find that the Tenant has not proven that the Landlord has failed to comply with the Act, regulations, or tenancy agreement. Therefore, the Tenants application for an Order the at the Landlord comply with the Act, regulation or tenancy agreement is dismissed without leave to reapply.

Conclusion

The Tenant's 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 Act.

Dated: December 19, 2024

Residential Tenancy Branch