



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNR, MNSD, OPT, RR, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants on August 26, 2016 for the following reasons: to cancel a notice to end tenancy for unpaid rent; for the costs of repairs to the rental unit; for the return of the security deposit; for an Order of Possession for the rental unit; for a reduction in rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the Landlord.

Preliminary Issues

The female Tenant appeared for the hearing and provided affirmed testimony as well as documentary and photographic evidence prior to the hearing. However, there was no appearance for the Landlord for the 46 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of the documents for this hearing by the Tenants.

The Tenant testified that she served the Landlord with a copy of the Application and the Notice of Hearing documents by registered mail on September 2, 2016. The Landlord provided a copy of the Canada Post tracking number into evidence as well as a copy of the returned envelope which is marked as being refused.

Section 90(a) of the *Residential Tenancy Act* (the “Act”) provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Tenant, I find that the Landlord was deemed served with the required documents on September 7, 2016 pursuant to the Act.

At the start of the hearing, the Tenant confirmed that she was not disputing a notice to end tenancy and did not require an Order of Possession back into the rental unit. The Tenant confirmed that the only matter to be dealt with on her Application was her

monetary claim as detailed on her Monetary Order Worksheet which she provided with the Application. The Tenant stated that this amount included the cost of repairs completed to the rental unit as well as a rent reduction.

In addition, the Tenant testified that she had not served the Landlord with a forwarding address after the tenancy had ended because she was fearful of repercussions from the Landlord. However, pursuant to Section 38(1) of the Act, a tenant is required to provide the landlord with an address before a landlord is obligated to deal with the return of the security deposit. Therefore, I find the Tenant's request for the return of the security deposit is premature and is dismissed with leave to re-apply.

I also note that the Tenant did not pay a filing fee as this was waived by the Residential Tenancy Branch. Therefore, this portion of the Tenant's Application was dismissed.

Based on the foregoing, I decided to deal with the Tenant's monetary claim through the losses she had disclosed on the Monetary Order Worksheet. Accordingly I amended the Tenant's Application for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to my authority under Section 64(3) (c) of the Act. The hearing continued to hear the Tenants' monetary claim.

Issue(s) to be Decided

Are the Tenants entitled to monetary compensation for loss under the Act, regulation or tenancy agreement?

Background and Evidence

The Tenant testified that this tenancy was an oral agreement for the Tenants to rent a two bedroom home with an unfinished basement portion to be used for storage. The tenancy started on May 15, 2016 and was on a month to month basis. Rent for the rental unit was agreed at \$1,000.00 per month and the Tenants paid the Landlord a security deposit of \$500.00 at the start of the tenancy which the Landlord still retains.

The Tenant testified that when they took occupancy of the rental unit, it was not ready. The Landlord informed the Tenants that her partner had been arrested and as a result, she was not able to have the rental unit ready for them. The Tenant testified that the Landlord was hoarder and had her personal property, which was mainly junk, was stored in the basement portion and underneath the porch area of the rental home which was promised to be removed by the Landlord's partner before the Tenants took occupancy. The Tenant provided photographic evidence to support this testimony. In

addition, the rental unit had not been painted and there was mold in the walls of the bathroom and kitchen. The Tenant also provided photographs showing a rotted deck.

The Tenant testified that the Landlord expressed her regret but there was nowhere else they could go to, so the Landlord agreed that the Tenants could paint the unit, fix the mold on the drywall in the kitchen and bathroom, remove the junk from the basement portion and porch area, and rebuild the outside deck. The Tenant testified that the Landlord promised that she would reimburse the Tenants for the costs associated with all of this as long as they had their receipts.

The Tenant testified that her and her husband (the Co-Tenant named on the Application) then spent the next couple of weeks: repairing the deck; cleaning out the basement portion of the Landlord's junk; repairing the drywall in the bathroom and kitchen; and repainting the rental unit. The Tenant provided several receipts to show the costs for the materials and supplies that were purchased by them to remedy the agreed repairs. As a result, the Tenants claim the following amounts for supplies: \$181.98; \$119.85; \$75.20; \$31.09; and \$328.66. The Tenant also claims \$76.75 and \$17.00 for dump fees associated with removing the Landlord's junk. The total amount claimed for this portion of the monetary claim is **\$830.53**. The Tenant testified that as they did not have access to the basement portion of the rental home which is where they were intending to store their personal property and belongings, they had to put this into storage at a cost of **\$152.25** as evidenced by a receipt for this amount.

The Tenant testified that shortly after they started to occupy the rental unit and move the Landlord's belongings from the basement portion, they started to notice that there was a mice infestation. The Tenant stated that they had two cats which lived with them in the rental home but they were only able to prevent the mice from coming into the remainder of the rental home. In addition, the entire rental home had a fly infestation. The Tenant provided several photographs showing fly traps with numerous dead flies as well as flies that had infested the countertops. The Tenant testified that every time they cooked or washed dishes, they would be surrounded by hundreds of flies. The Tenant testified that she addressed this issue with the Landlord several times but the Landlord failed to do anything about it, only providing them with some fly spray. The Tenant stated that she purchased a number of bug sprays and traps for the mice at a cost of **\$27.87**. The Tenant testified that despite the Landlord allowing her to deduct \$200.00 from her monthly rent for June and July 2016, the pest infestation got so bad that they decided that enough was enough and they provided notice to the Landlord that they would be ending the tenancy at the end of August 2016; however, they ended up leaving the rental unit on August 5, 2016.

The Tenant testified that they had no choice but to leave the rental unit but could not find another place to go to in such a short period of time. Therefore, the only option they had was to go to a campsite and camp for two months until they were able to secure proper accommodation. As a result, the Tenant now seeks costs associated with having to move. The Tenant testified that they had to store their belongings for two months in storage at a cost of **\$145.95** and **\$158.55**. In addition, they incurred camping fees, firewood and propane costs, costs for purchasing chairs and a mattress, and camping supplies totaling **\$337.20**; the Tenant claimed \$58.00 for wood fire but withdrew this portion of the claim as she did not have a receipt. The Tenant provided receipts for the amounts being claimed and provided a statement from the campsite owner who details the costs paid by the Tenants for camping at their site was **\$348.00**. The tenant explained that they got a reduced rate at this camp site and were therefore able to mitigate the amount they had to spend as a result of having to leave the rental unit.

The Tenants also claim for the cost of gas for having to travel from the camp site which was located 35 kilometers away from town in order to use internet services to find alternative proper accommodation. The Tenant provided receipts for these costs in the amount of **\$80.00**.

The Tenant claims all the rent she paid for this tenancy from the Landlord in the amount of **\$2,100.00**. The Tenant stated that the Landlord failed to provide them with a rental unit that was clean and undamaged and when they learnt the house was infested with pests, the Landlord failed to take diligent and appropriate action to remedy the issue. The Tenant stated that during their short occupancy at the rental unit, they received no enjoyment of the rental unit as the flies were a constant disturbance day and night and that they spent most of the time doing repairs which the Landlord was responsible for. The Tenant stated that this took a severe toll on her health and led to a number of health problems. As a result, the total amount claimed by the Tenant in this Application is **\$4,180.35**. The Tenant confirmed this amount during the hearing.

Analysis

Section 32(1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the healthy safety and house standards required by law, and make it suitable for occupation by a tenant. In addition, Section 28 of the Act provides a tenant with reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, and use of common areas free from significant interference.

Under Section 7 of both the Act: a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Damage or loss is not limited to physical property only, but also includes less tangible impacts such as: loss of access to any part of the residential property provided under a tenancy agreement; loss of a service or facility provided under a tenancy agreement; loss of quiet enjoyment; loss of rental income that was to be received under a tenancy agreement and costs associated; and damage to a person, including both physical and mental.

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 accept the undisputed oral evidence of the Tenant, which is supported by photographs that the Landlord breached the Act. I find the undisputed evidence before me suggests that on the balance of probabilities the Landlord failed to provide the Tenants with a rental unit that was in a reasonable state of decoration and repair. Furthermore, I find that the Landlord failed to take diligent steps to remedy this situation relying on the Tenants to solve and remedy the Landlord's breach.

I accept the Tenant's evidence that they had to complete repairs to the rental unit such as repairing and replacing the deck to the rental property and having to paint the rental unit and repair the drywall. I also accept that the Landlord failed to provide the Tenants with the basement portion of the home which forced them to have to put their property into storage. I find that the Landlord continued to breach the Act by again not diligently and properly dealing with the pest problems for which the Tenant provided evidence of in this tenancy. As a result, based on the photographic evidence before me, I accept that the Tenants had no choice under the circumstances but to vacate the rental unit and seek alternative accommodation.

Accordingly, I find the Tenants are entitled to the costs of the repairs they completed to the rental unit and for the storage costs they incurred during and after the tenancy ended. I find that the Tenants have verified the costs they incurred through invoice evidence and I am satisfied that they made efforts to mitigate their losses by seeking

alternative accommodation that was low in cost as opposed to taking refuge in high costs hotels.

In consideration of the Tenants' claim for rent re-imbursement of the time they occupied the rental unit, I find the Landlord's lack of care, attention, and remedy in this tenancy warrants such compensation. I find the tenants incurred unreasonable disturbance from the pests while having to deal with repairs and removal of the Landlord's property which was the Landlord's responsibility. Therefore, I also grant the Tenants the requested rent abetment of \$2,100.00.

In conclusion, I am satisfied by the Tenant's monetary claim disclosed in this hearing of \$4,180.35 and grant this to the Tenants. The Tenants are issued with a Monetary Order for this amount pursuant to Section 67 of the Act. This order must be served on the Landlord and may then be filed in the Small Claims Court of the Provincial Court and enforced as an order of that court if payment is not made. Copies of this order are attached to the Tenants' copy of this Decision. The Landlord may also be held liable for the enforcement costs of the order.

Conclusion

The Tenant's' monetary claim of \$4,180.35 is granted. 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: October 20, 2016

Residential Tenancy Branch

