Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Landlord MG," the landlord's agent GM ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that her agent had permission to speak on her behalf at this hearing. This hearing lasted approximately 76 minutes, in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution and hearing notice. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and hearing notice.

The landlord confirmed receipt of the tenant's digital evidence contained on a USB drive. He stated that the USB drive could not be opened or viewed on his computer. The tenant submitted a "Digital Evidence Details" form indicating that he "confirmed that the other party was able to see/hear the evidence on this digital device." During the hearing, the tenant stated that he did not confirm that the landlord could see or hear the evidence on the USB drive, he just assumed that he could because of other digital evidence that was provided to the landlord at other previous Residential Tenancy Branch ("RTB") hearings. As the tenant did not confirm that the landlord could hear or see the digital evidence on the USB drive prior to the RTB hearing as required by the RTB *Rules of Procedure*, and the landlord was unable to access the digital evidence, I

notified the tenant that I could not consider this evidence at the hearing or in my decision.

Preliminary Issue – Amendments to Tenant's Application

As the tenant did not provide any evidence with respect to his request for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, and his tenancy has ended, I dismiss this application without leave to reapply.

The landlord consented to the tenant's request to amend his monetary claim to increase it from $7,575.00 to $8,175.00 to account for an additional loss between April 1 and 21, 2017, when the tenant vacated the rental unit. Since the tenant applied prior to vacating, he said that he did not know the amount of the loss until he left. Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to increase his monetary claim to $8,175.00, based on the landlord's consent.

Preliminary Issue – Adjournment Request by Landlord

The tenant confirmed that he did not receive the landlord's written evidence package, which the landlord said was sent to the rental unit address by registered mail. He said that he was aware that the tenant had vacated the rental unit by then but he had hoped that the tenant had provided a forwarding address to the post office and it would be sent to the new address by the post office. He said that the tenant did not provide any other forwarding address or email on his application or otherwise. During the hearing, the landlord located the tenant's email address which was provided on the tenant's application after looking at the form carefully.

I notified the landlord that I could not consider his written evidence package at the hearing or in my decision. The evidence consisted of three previous RTB decisions between these parties for this tenancy, as well as a number of the tenant's submissions put together in different exhibits labelled by the landlord.

I informed the landlord that the evidence had to be served to the tenant at an address where he was residing or a forwarding address provided by him. In this case, the landlord was well aware that the tenant had already vacated the rental unit and still sent the mail to that address. The landlord did not make any efforts to contact the tenant in order to obtain a forwarding address. The landlord also did not attempt to send the

documents by email, to the tenant's email address provided on the application as a method of service. Although email is not usually accepted as a method of service under section 88 of the *Act*, an Arbitrator can deem sufficient service for the purposes of the *Act* as per section 71(2)(c) if the tenant receives and reviews the evidence and the landlord can also apply for an order for substituted service under section 71 from an Arbitrator to serve the tenant by email.

When I provided the landlord with my decision regarding the written evidence, the landlord requested an adjournment of the hearing. When I asked the tenant whether he consented to or opposed the request, he said that he did not know. Despite the fact that I explained the evidence issues and the adjournment request to the tenant in plain language several times in order to inform him so that he could provide me with his position, he still provided the same answer, that he did not know whether he wanted the hearing to be adjourned or not.

During the hearing, I advised the parties that I was not granting an adjournment of this hearing. I did so after taking into consideration the criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

> *Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*
>
> - *the oral or written submissions of the parties;*
> - *the likelihood of the adjournment resulting in a resolution;*
> - *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
> - *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
> - *the possible prejudice to each party.*

The tenant filed his application on March 31, 2017. The landlord was served with the tenant's application shortly thereafter. The hearing occurred on August 28, 2017, nearly five months later. The landlord had more than enough time to contact the tenant and serve the written evidence to him. The parties are well aware of the RTB *Rules of Procedure* since they have been to three previous RTB hearings, which also involved issues regarding service of documents. The parties have already waited a number of months for this hearing to occur. The tenant did not have the landlord's documents in

front of him during the hearing in order to confirm whether his submissions that were contained in the landlord's evidence were accurate or not. I did not wish to delay the proceedings any further for reasons that were within the control of both parties regarding proper service of documents.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 15, 2013 and ended on April 21, 2017. Monthly rent in the amount of $700.00 was payable on the first day of each month. A security deposit of $350.00 was paid by the tenant and the landlord returned it to the tenant during the tenancy. A written tenancy agreement was signed by both parties.

The tenant seeks a monetary order for $8,175.00. He said that he is entitled to compensation under section 32 of the *Act* because the landlord failed to maintain the rental unit in a "state of decoration and repair" during his tenancy. He stated that this means that the landlord has to ensure that the rental unit is aesthetically pleasing and worth the value of the rent that he was paying each month. He claimed that the landlord failed to complete timely repairs and that his tenancy was devalued because of it.

The landlord opposed the tenant's claims, stating that his issues were *res judicata* because they were dealt with at previous RTB hearings and criticized by previous Arbitrators as purely "cosmetic" and "aesthetic" and not requiring repairs. The landlord claimed that any required and reported repairs were dealt with diligently by the landlord. The landlord said that the tenant waited a long time before bringing monetary claims for compensation for old repairs. He stated that the tenant did not meet the required damages test under section 67 of the *Act* because he failed to show how it affected him personally, aside from aesthetic concerns.

Analysis

I note that, although I did not allow the previous RTB decisions to be admitted into evidence at the hearing, I did review them prior to the hearing in order to determine whether I had jurisdiction to deal with the tenant's application, which I do, as his claim for monetary damages was previously dismissed with leave to reapply on November 25, 2016. The file numbers for all three hearings appear on the front page of this decision.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the tenant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the tenant's entire application for $8,175.00 without leave to reapply.

I find that the tenant did not meet part 1 of the above test by failing to show what losses he suffered as a result of the various "incidents" that he described. Most of what was described by the tenant included aesthetic and cosmetic issues that the tenant was not pleased with, stating that it devalued his tenancy because it was "not what I paid for" in rent. The tenant said that he did not miss any work or school, he did not suffer any medical injuries or have to obtain any medical treatment, as a result of the various repair issues in the rental unit. The tenant cited a crack in the bathtub, crooked cupboards, a hole in the ceiling, "floor turning," and a hole in the kitchen floor, as part of his claimed damages.

The tenant also stated that he suffered a loss in heat, a leaky kitchen faucet, parking issues, and no light fixtures, which were all eventually repaired or remediated by the landlord according to the tenant. I find that the above issues, most of which were ultimately repaired by the landlord during his tenancy, were a temporary inconvenience for the tenant. He did not demonstrate how these issues caused him a loss in any way, except to repeat that it "devalued" his tenancy. He did not submit any laundromat bills

for having to do laundry elsewhere, any items purchased to deal with the loss of heat, any increase in his utility bills due to using the stove for heat like he claimed or the waste in water from the leaky faucet, any police reports to show that he reported the heat issue to the police as he claimed, or any effect on his vehicle for the parking issue.

I find that the tenant failed part 3 of the above test because he was unable to justify the amount being claimed. He said that he went through other RTB decisions posted online and "amalgamated" numbers from them, but he did not supply copies of any decisions that he was referencing. The tenant said that he came up with an "allotment" of $2.50 per day per incident which was 0.004% of his rent and it was a reasonable number but he failed to show how.

As the tenant was wholly unsuccessful in this application, I find that he is not entitled to recover the $100.00 application filing fee from the landlord.

Conclusion

The tenant's entire 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: August 30, 2017

Residential Tenancy Branch