



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, PSF, OLC, MNRT, MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”), an order for the Landlord to provide services required by the tenancy agreement or law, an order for the Landlord to comply with the Act, regulation, or tenancy agreement, compensation for the cost of emergency repairs completed, compensation for other loss or money owed, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, the Landlord, and the Landlord’s assistant (the “Assistant”), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (“Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

Preliminary Matter #1

With the consent of the Landlord, the Tenant withdrew her Application seeking cancellation of the Two Month Notice, an order for the Landlord to provide services required by the tenancy agreement or law, and an order for the Landlord to comply with the Act, regulation, or tenancy agreement.

As a result, the hearing proceeded based only on the Tenant's Application seeking compensation for the cost of emergency repairs completed, compensation for other loss or money owed, and recovery of the filing fee.

Preliminary Matter #2

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Is the Tenant entitled to compensation for emergency repairs completed?

Is the Tenant entitled to compensation for loss or money owed under the *Act*, regulation, or tenancy agreement?

Is the Tenant entitled to the recovery of the filing fee?

Background and Evidence

Although a written tenancy agreement was not before me for consideration, the parties agreed that the tenancy began approximately 13 ½ years ago. In her Application the Tenant sought monetary compensation in the amount of \$14,035.23; \$10,000.00 for loss of quiet enjoyment and \$4,035.23 for the cost of emergency repairs she states she completed herself.

The Tenant testified that due to a prior flood approximately 10 years ago, there was mold in the flooring and walls of the basement. She stated that her mother was rushed to the hospital due to the mold and as a result, she ripped up and replaced flooring and drywall in several areas of the basement. The Tenant stated that she also replaced old electrical plugs and light fixtures for cosmetic and operational purposes, covered furnace ducts to prevent the ingress of mice due to a rodent problem with the property, and painted the entire rental unit. As a result, she sought \$4,035.23 for the cost of these repairs. In support of her testimony the Tenant submitted an invoice in the amount of \$3,125.00, a Monetary Order Worksheet claiming \$910.00 in other repairs for which receipts were not provided, and a series of photographs of the rental unit before and

after renovations as well as a photograph of her mother in the hospital. Further to this the Tenant stated that she mitigated her loss by purchasing items as cheaply as possible and by purchasing items used, where appropriate and available.

The Landlord stated that the Tenant never advised him in advance that she was going to complete these renovations and repairs and was not granted permission to complete them. Further to this, he stated that he has not been provided with receipts for all amounts claimed. As a result of the above, the Landlord stated that the Tenant is therefore not entitled to the \$4,035.23 in monetary compensation sought. When asked, the Tenant confirmed that she never received permission to complete the aforementioned renovations and repairs; however, she stated that she did request that the Landlord complete them, which he declined to do.

While the Tenant testified that the Landlord agreed to compensate her for the renovations and repairs completed, the Landlord refuted this testimony stating that although he offered to provide the Tenant with some compensation if she signed a mutual agreement to end the tenancy, none was provided as the Tenant refused to end the tenancy by mutual agreement.

The Tenant also sought \$10,000.00 in monetary compensation for loss of quiet enjoyment. In the hearing she testified that for several years there were rodent, mold, and electrical issues with the rental unit. The Tenant stated that as a result of the rodent problem, she could not use the bottom kitchen drawers for an extended period of time and was required to throw out food and dishware. The Tenant stated that although the Landlord brought in an exterminator, the problem persisted and the mice urinated in the furnace and died in the walls, causing a terrible odour. Further to this, the Tenant stated that the mold made her mother ill and they were unable to use parts of the rental unit, such as one of the bathrooms, due to the mold.

As the Monetary Order Worksheet and the documentary evidence did not describe how the Tenant calculated the \$10,000.00 sought, I asked the Tenant to explain how this amount was calculated. The Tenant was unable to provide me with any details other than to state that she feels this is the total amount of compensation due for the losses suffered.

The Landlord testified that he always acted swiftly and reasonably when issues were brought to his attention and pointed to the testimony of the Tenant where she acknowledged that an exterminator was hired. The Landlord stated that he even gave the Tenant direct contact information for a pest control company and tradespersons so

that the Tenant could contact them herself when issues arose and have repairs or extermination completed at his cost. As a result, the Landlord stated that no compensation is due.

While the Tenant acknowledged receiving this contact information, she stated that the pest control company refused to do anything further stating the rodent problem is a cleaning issue, which she stated it is not.

Analysis

Although the Tenant sought \$4,035.23 in compensation for the costs of emergency repairs completed, section 33 defines emergency repairs as follows:

Emergency repairs

- 33** (1) In this section, "**emergency repairs**" means repairs that are
- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

The Tenant testified that she ripped up and replaced flooring and drywall due to mold, replaced old electrical plugs and light fixtures, covered furnace ducts, and painted the entire rental unit. While I concede that *some* of these repairs *may* have been urgent, and/or necessary for the health or safety of occupants or for the preservation or use of the residential property; ultimately there was insufficient testimony and documentary evidence before me from the Tenant that any of the repairs made were for the purposes outlined under section 33(c) of the *Act*. As a result of the above, I find that these repairs do not qualify as emergency repairs. To me it appears that the Tenant is actually seeking to recoup costs for renovations and repairs voluntarily made by her over the 13 ½ year tenancy, not for the cost of emergency repairs pursuant to section 33 of the *Act*.

In any event, the Tenant failed to provide any evidence or testimony that she complied with section 33(3) of the *Act* and acknowledged that she did not receive approval for these repairs prior to completing them. Based on the above, I find that even if the repairs qualified as emergency repairs pursuant to section 33(1) of the *Act*, which they do not, pursuant to section 33(6) of the *Act*, the Tenant would not be entitled to compensation as she made the repairs before one or more of the conditions in subsection (3) were met. Based on the above, I therefore dismiss the Tenant's claim for \$4,035.23 in compensation for the costs of emergency repairs completed without leave to reapply.

Having made the above finding, I will now turn my mind to the Tenant's claim for loss of quiet enjoyment. Policy Guideline # 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. It also states that 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 her Application the Tenant did not specify how she arrived at the \$10,000.00 amount being sought for loss of quiet enjoyment or provide a breakdown of this cost in the Monetary Order Worksheet. In the hearing I asked the Tenant to provide me with details about how this amount was calculated, such as an accounting of the amounts sought per month or per type of loss and an explanation of how she determined these amounts. However, the Tenant was unable to provide me with any explanation as to how she calculated the amount owed to be \$10,000.00 other than to state that she feels this is the total amount due to her for the mold, rodent, and electrical issues she encountered throughout the tenancy.

Although I appreciate the Tenant's belief that she is entitled to \$10,000.00, as she was unable to explain to me how she arrived at the specific dollar amount of her claim, I find that she has therefore failed to prove the amount of or value of the damage or loss. Having made this finding, I need not make any further findings of fact or law in relation

to the Tenant's claim for loss of quiet enjoyment and I therefore dismiss her \$10,000.00 claim without leave to reapply.

As the Tenant was not successful in her Application, I decline to grant her recovery of the filing fee.

Conclusion

The Tenant's Application seeking compensation for the cost of emergency repairs completed, compensation for other loss or money owed, and recovery of the filing fee 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: July 23, 2018

Residential Tenancy Branch