Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, RP, PSF, LRE, RR, FFT

Introduction

This hearing dealt with the tenant's original September 3, 2019 application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

On September 26, 2019, the tenant made an amendment to the original application, adding the following to their previous application:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The tenant's amended application also added a request for a monetary award of $1,930.00. This amount was intended as a means of quantifying the amount of loss in value of the tenancy arising out of the landlord's alleged failure to provide services which the tenant expected to receive when they entered into this tenancy agreement.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. As the tenant confirmed that they were handed the 1 Month

Notice by the landlord on September 24, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord's agent (the agent) confirmed that the tenant handed a copy of the tenant's original dispute resolution hearing package to the landlord on September 10, 2019, and was also handed a copy of the tenant's amended application, I find that the landlord was duly served with this package in accordance with section 89 of the *Act.*

The tenant said that they provided copies of their written and photographic evidence to the landlord by email, a method of service delivery not permitted under section 88 of the *Act*. The agent said that they had not received any written or photographic evidence from the tenant. The tenant said that the only evidence they had received from the landlord were a couple of photos of trees or plants, the meaning of which the tenant could not understand. Although the agent maintained that photographic and written evidence was handed to the tenant on September 24, 2019, no one attended the hearing who had allegedly handed this evidence to the tenant. At the hearing, I also noted that some of the written evidence that had allegedly been provided to the tenant on September 24, 2019, referred to electrical work done on the rental property well after that date. Under these circumstances, I advised both parties that the only written or photographic evidence I would be considering were the photographs of the trees or plants, which had no bearing on the tenant's application. There is insufficient evidence to demonstrate that any of the other written or photographic evidence was served in accordance with section 88 of the *Act*.

Preliminary Issue- Changed Circumstances since Amended Application Submitted

At the commencement of the hearing, the tenant confirmed that they moved out of the rental unit by October 31, 2019, in compliance with the effective date identified on the landlord's 1 Month Notice. Since this tenancy has ended, the tenant confirmed that they were withdrawing all of the following items identified in their original and amended applications:

- cancellation of the landlord's 1 Month Notice ;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70,

Each of the above portions of the tenant's application are hereby withdrawn.

This leaves consideration of the following two issues currently before me:

- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Issues(s) to be Decided

Should the tenant be allowed a monetary award for a retroactive reduction in rent paid during this tenancy as a result of facilities and services that the tenant expected to receive when they entered into this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy for a rental home in one unit of a two unit structure began about six years ago. This rental unit was above a commercial laundromat, operated as a business by the landlord for the first 4 1/2 years of this tenancy. The landlord discontinued operating the main floor as a laundromat about a year and a half ago. The tenant said that there are also a number of other dwelling units, including trailers on this property.

Although the agent maintained that there was a written month-to-month tenancy agreement in place between the parties, the agent did not have a copy of that agreement available to them. The parties agreed that by the end of this tenancy, monthly rent was set at $565.00, payable in advance by the first of each month. The landlord continues to hold the tenant's $250.00 security deposit. The tenant has not provided the landlord with their forwarding address in writing, so the landlord is under no obligation at this time to return the tenant's security deposit. At the hearing, the agent said that as long as the tenant removes garbage that was left on the premises at the end of this tenancy, the agent will return the security deposit in full to the tenant by hand.

Although the parties did not enter into written evidence a copy of the 1 Month Notice, the agent asserted that the 1 Month Notice was issued because the tenant was running a grow-up from these premises. The tenant strongly disputed this allegation.

The tenant's amended application seeking a monetary award of $1,930.00 did not include the Monetary Order Worksheet that applicants are asked to include with their application for dispute resolution. Rather, the tenant's amended application included the following rough breakdown of the requested $1,930.00:

Item	**Amount**
Recovery of First Month's Rent	$565.00
Recovery of Last Month's Rent	565.00
Moving Expenses	500.00
Reimbursement for Time without Services	300.00
Total Monetary Order	**$1,930.00**

When I enquired as to how the tenant arrived at the above figures, the tenant testified that these were the estimates the tenant gave to the landlord after having received the 1 Month Notice as the expenses that the landlord would need to pay in order for the tenant to leave the rental unit. The parties agreed that the landlord did not make a payment to the tenant for any of the above items at the end of this tenancy.

The tenant testified that they raised many concerns about the condition of the rental unit and the services that were deficient during the course of this tenancy. The tenant testified that they raised these concerns orally with one of the landlord's representatives on many occasions over the years to no avail. These concerns included mouldy conditions within the rental unit and on the windows. The tenant testified that for three years the fridge leaked water on the floor, requiring towels to be placed in front of the fridge to absorb this moisture. The tenant said that the landlord refused to replace deficient windows, another source of mould. The tenant said that the toilets never worked properly during this tenancy. They also said that the landlord replaced the existing hot water tank with one that was about 1/8th the size of the previous water heater such that it became impossible to take a bath in the rental unit. The tenant also testified that in the final stages of this tenancy that the electrical system was malfunctioning to the point where the repairs undertaken by unlicensed electricians were presenting a major safety problem with uncovered breaker boxes exposed.

The tenant also asserted that a laundromat on the main floor of this building had previously provided the tenant and others living in nearby trailers with an opportunity to do their laundry without having to leave the property. The tenant said that the availability of this laundry facility was a key reason that the tenant chose to enter into this tenancy. The tenant said that they were given a key to access this commercial

facility as were others. The tenant said that they paid $2.00 to use this laundry facility while the next nearest facility charged $4.00 for similar laundry.

The agent said that they were familiar with most of the tenant's stay in this rental unit, although they were not as involved with managing the property for the past year and a half. The agent said that they understood that the tenant only began lodging complaints after the landlord issued the 1 Month Notice after discovering the grow-operation that the tenant was apparently operating. The agent said that the tenant never made any of the oral enquiries they were claiming until they received the 1 Month Notice.

The agent gave undisputed sworn testimony that the laundromat in question was a commercial laundromat operated by the landlord to serve members of the public, including the tenant. The agent said that the laundromat did not generate sufficient business to warrant the landlord keeping it in operation. The landlord closed the laundromat about a year and a half ago. Since this was a commercial business, the agent did not believe that a publicly available business such as this one represented a service or facility that the tenant was entitled to receive as part of their existing tenancy agreement with the landlord.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove on the balance of probabilities that the landlord contravened the *Act* by withholding services or facilities that led to a loss in the value of the tenancy agreement entered into between the parties when this tenancy began.

Section 32 of the *Act* outlines the landlord's obligations to repair and maintain a rental unit. This section reads in part as follows:

> ***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....*
>
> *(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.*

Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

In this case, neither party provided sufficient documentation to demonstrate that they had served the other party with written or photographic evidence that was in any way helpful for this hearing. While the tenant maintained that they had made repeated oral requests to the landlord or the landlord's representative to undertake necessary repairs, the tenant confirmed that there is no written record of any of these requests. The agent said that they were unaware of any requests of this nature until such time as the tenant received the landlord's 1 Month Notice, after the tenant's grow operation was discovered.

In considering this matter, I note that there is no evidence that the landlord gave any type of assurance when this tenancy began that the landlord would continue to operate a commercial laundromat below the tenant's rental unit. The tenant had little evidence to contradict the agent's claim that the laundromat was open to the public and that the tenant was paying the same rate as were members of the public at this commercial operation. As such, I find little evidence to support the tenant's assertion that the value of their tenancy agreement was somehow reduced by the landlord's decision to close this separate business.

The absence of any written record, letters, notes, text messages or even witnesses to support the tenant's claim that the landlord ignored the tenant's requests for repairs lends credence to the agent's claim that the tenant did not raise these issues with the landlord until after the landlord was seeking an end to this tenancy for cause. However, I also note that the agent did not question the tenant's allegations regarding various items such as the leaking fridge, the state of the electrical system and the lack of hot water during parts of this tenancy. On a balance of probabilities, I find that the tenant is entitled to only a modest reduction in rent for the problems the tenant maintained were

present during this tenancy, rather than the $1.930.00 amount identified in their amended application. For these reasons, I allow the tenant a retroactive rent reduction equivalent to 5% of the their total rent during the final six months of this tenancy. This results in a monetary award of $169.50 ($565.00 x 5% x 6 months = $169.50) in the tenant's favour.

Had the tenant provided more documentation to demonstrate that their concerns were ignored by the landlord during this tenancy, the tenant may very well have been entitled to a significantly increased monetary award.

Since the tenant has been partially successful in this application, I allow them to recover their $100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour of $269.50, which allows the tenant a $169.50retroactive reduction in the value of their tenancy and to recover the $100.00 filing fee for their application from the landlord.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The remainder of the tenant's application is withdrawn.

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: November 12, 2019

Residential Tenancy Branch