



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KINGSGATE GARDENS CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFT MNDCT MNSD**
 FFL MNDL

Introduction

This hearing dealt with applications filed by both the tenant and the landlord pursuant to the *Residential Tenancy Act* (“Act”).

The tenant applied for:

- Authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- A monetary order for damages or compensation pursuant to section 67; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

The landlord applied for:

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72; and
- A monetary order for damage to the rental unit pursuant to section 67.

The landlord attended the hearing, represented by RP (“landlord”). The tenants attended the hearing, co-tenant VB representing them (“tenant”). The parties acknowledged the exchange of one another’s Application for Dispute Resolution Proceedings Package and stated there were no concerns with timely service of documents. Both were prepared to deal with the matters of their respective applications.

The parties both confirmed the issue of the return of the tenant’s security deposit was decided at a previous hearing before an arbitrator and the tenant no longer requires an order regarding this issue. I dismiss this portion of the tenant’s claim.

Preliminary Matter

Section 63 of the *Act* allows an Arbitrator to assist the parties settle their dispute and record the settlement in the form of a decision and order if the parties settle their dispute during the dispute resolution proceeding. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms of a settlement. The parties could not reach consensus on the terms of a settlement; therefore, I heard testimony, considered the evidence, and issue a decision to resolve this dispute.

Issue(s) to be Decided

Is the tenant entitled to compensation from the landlord?

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Should either of the parties recover their filing fees?

Background and Evidence

- tenant's claim to be reimbursed for June rent

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant gave the following testimony. He moved into the rental unit in 2015. Fixed term tenancies were renewed yearly, the most recent tenancy agreement was signed on July 1, 2018 and was scheduled to end on June 30, 2019.

On April 26th, the tenant advised the landlord that he wished to terminate the tenancy and that he would continue paying rent until May 30th. He asks the landlord to start finding new tenants for June 1st. If no new tenant could be found, the tenant agreed to *'honor my agreement till June 30, 2019'*. That same day, the landlord responded indicating they do not have a new tenant for June 1st, however the tenant may have to pay *'a small fee to break the lease'*. A further email on April 26th from the landlord asks the tenant for dates and times to be able to show the unit and have a *'better chance of re-renting it before June 1st'*.

On May 31, 2019, the landlord emailed the tenant saying *'As mentioned, we have not found a new tenant for your unit. If we do find somebody for your unit, we will refund the proportionate rent to you; however, please take into consideration that we will need to charge you something as agreed before to break the lease and this would be deducted from the proportionate rent that gets refunded.'*

The tenant testified that new tenants moved into the unit he vacated on June 1st.

The landlord provided the following testimony. They were unable to find tenants for the unit for June, however there were new tenants planning to move into a different unit for June 1st who changed their minds and took the tenant's vacant unit instead. The landlord agreed to let them take the newly vacant unit instead of the original one the landlord had planned on renting to them. The other unit remained vacant until the end of July.

- Landlord's claim for damages caused by flooding

The landlord provided the following testimony. On October 31, 2017 the tenant's unit flooded. The tenants failed to notify the landlord that there were any problems with the plumbing, and they are therefore responsible for the flood. The tenant was supposed to have tenant insurance as part of the tenancy agreement and if he had it, the flood would have been covered by it. There was damage done to the unit below the tenant's and the tenant should be responsible for paying that as well. No invoices were provided in evidence by the landlord.

The tenant testified that he did indeed have tenant insurance and filed a claim. A copy of the letter from his insurer was provided as evidence. The tenant submits that the landlord never followed up on the insurance claim. Invoices were provided to the tenant at any time prior to the landlord filing his Application for Dispute Resolution Proceedings with the Residential Tenancy Branch. The flooding happened because of a wire mesh installed against a flexible plastic pipe which caused the pipe to burst. The tenant provided photographs of the mesh against the plastic pipe taken the night of the burst pipe as evidence. The burst pipe woke him up at 1:00 in the morning the night of October 31, 2017. There was no way he could have made the landlord aware of the potential for pipe bursting until it actually happened.

Analysis

- Tenant's claim to recover rent paid for June 2019

Pursuant to section 44(1)(a)(i), a tenancy ends if a tenant gives notice to end the tenancy in accordance with section 45.

Section 45(2) states:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- a. is not earlier than one month after the date the landlord receives the notice,
- b. is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- c. is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The email dated April 26th clearly shows the tenant was going to end the tenancy before the end of the fixed term, on May 30, 2019 instead of June 30, 2019.

Since section 45 does not allow a tenant to end a fixed term tenancy before the date specified on the tenancy agreement as the end of the tenancy, I find the tenant in breach of section 45(2)(b) of the *Act* and is liable to compensate the landlord until the last day in June, 2019 as agreed to in the tenancy agreement. The evidence shows the tenant already paid rent for the full month of June and so the landlord is not entitled to collect this. The tenant seeks to recover the rent for the month of June because the landlord rented the unit out for the beginning of June and didn't return the rent in accordance with their agreement.

Pursuant to section 7(2) of the *Act*, a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

This is explored in depth in Residential Tenancy Branch Policy Guideline PG-5.

Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent. Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

As stated above, the *Act* does not require the landlord to rent the unit out for a date earlier than June 30th, the expiration date of the fixed term tenancy noted on the tenancy agreement. Despite this, I find the email messages indicate the landlord was willing to return a 'proportional amount' of the June rent after taking a 'small fee' if new tenants were found for June 1st. The exact amount the landlord was going to keep was never stated in any of the landlord's correspondences but from the email messages provided, I am satisfied the landlord agreed to return at least a part of the tenant's June rent.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided. An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward. "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

From the evidence supplied and the testimony of the parties, I am satisfied the landlord agreed to pay a 'small amount' to the tenant if the rental unit was re-rented for June. As the re-rental did happen, pursuant to the agreement between the parties, the tenant is entitled to this 'small amount'. As neither party specified how much this would be, I am left with awarding the tenant a nominal amount for compensation, keeping in mind the tenant was found to be in breach of the *Act* when he ended the tenancy before the end

of the fixed term. In light of this, I determine the tenant is entitled to one week's rent, calculated at (~~\$1,500.00~~ **\$1,950.00**/30 days x 7 days = ~~\$350.00~~ **\$455.00**). I award the tenant ~~\$350.00~~ **\$455.00** pursuant to section 67 of the *Act*.

- Landlord's claim for damage from burst pipe on October 31, 2017

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

The landlord states the tenant was in breach of the *Act* for failing to advise him that there was the potential for a burst pipe which led to the flooding. I find the landlord has not provided satisfactory proof to substantiate this claim. I accept the tenant's testimony that there was no way he could have foreseen the burst pipe caused by the wire mesh against the plastic pipe. It would be unreasonable to expect any person to be able to predict such an accident would occur. The landlord has failed to provide sufficient evidence to satisfy me that the damage to the rental unit resulted from the violation of the *Act*, regulations or tenancy agreement by the tenant.

Further, the landlord has not provided any documentary evidence to show the value of the damage he claims or what steps he took to mitigate the damage. No invoices were presented by the landlord and no documents were supplied to show the landlord ever followed up with his own insurer or the tenants' for the flood that happened over two years ago. For the landlord's failure to provide sufficient evidence to establish the four points (above), the landlord's claim for compensation is dismissed.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of his application. The landlord's filing fee will not be recovered.

Conclusion

I issue a monetary order in the tenants' favour in the amount of ~~\$450.00~~ **\$555.00**.

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: January 23, 2020

DECISION/ORDER AMENDED
PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY
ACT ON **FEBRUARY 3, 2020** AT
THE PLACES INDICATED IN
BOLD UNDERLINE.

Residential Tenancy Branch