



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDCT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on May 25, 2020. The Tenants applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence and did not take issue with the service of these documents. I find both parties sufficiently served the other party with their evidence for the purposes of this hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenants applied for multiple remedies under the *Act*. However, the Tenants moved out of the rental unit by April 1, 2020, and do not require many of the issues they initially applied for. Given the tenancy is now over, the only ground left to consider is the Tenants' application for monetary compensation. The remaining grounds are dismissed without leave, as they are now moot.

Further, the Landlord, within his evidence package, made reference to amounts he was seeking from the Tenants as part of this proceeding. However, I note the Landlord did

not file an application against the Tenant for compensation. There was no cross application made, and this proceeding only pertains to the Tenants' request for compensation. The Landlord would have to file his own application should he choose to pursue compensation from the Tenants.

Issue(s) to be Decided

1. Are the Tenants entitled to compensation for loss or money owed?

Background and Evidence

As per the tenancy agreement provided into evidence, the tenancy started on September 1, 2018. The Tenants moved out on March 31, 2020. Monthly rent was set at \$850.00 per month, and was due on the first of the month. The tenancy agreement shows that the following items are included in rent:

3. RENT (please fill in the information in the spaces provided) <i>N.B. Rent includes Elec, N Gas Water & Sewer</i>					
a) Payment of Rent: The tenant will pay the rent of \$ <u>850.00</u> each (check one) <input type="checkbox"/> day <input type="checkbox"/> week <input checked="" type="checkbox"/> month to the landlord on the first day of the rental period which falls on the (due date, e.g., 1st, 2nd, 3rd, 31st) <u>1st</u> day of each (check one) <input type="checkbox"/> day <input type="checkbox"/> week <input checked="" type="checkbox"/> month subject to rent increases given in accordance with the RTA. The tenant must pay the rent on time. If the rent is late, the landlord may issue a <i>Notice to End Tenancy for Unpaid Rent</i> (form RTB-30) to the tenant, which may take effect not earlier than 10 days after the date the notice is given.					
b) What is included in the rent: (Check only those that are included and provide additional information, if needed.) The landlord must not terminate, or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or that is a material term of the tenancy agreement.					
<input checked="" type="checkbox"/> Water	<input checked="" type="checkbox"/> Natural gas	<input type="checkbox"/> Garbage collection	<input checked="" type="checkbox"/> Refrigerator	<input checked="" type="checkbox"/> Carpets	
<input type="checkbox"/> Cablevision	<input checked="" type="checkbox"/> Sewage disposal	<input type="checkbox"/> Recycling services	<input type="checkbox"/> Dishwasher	<input checked="" type="checkbox"/> Parking for <u>1</u> vehicles	
<input checked="" type="checkbox"/> Electricity	<input type="checkbox"/> Snow removal	<input type="checkbox"/> Kitchen scrap collection	<input checked="" type="checkbox"/> Stove and oven	Other: <input type="text"/>	
<input type="checkbox"/> Internet	<input type="checkbox"/> Storage	<input type="checkbox"/> Laundry (coin-op)	<input type="checkbox"/> Window coverings	Other: <input type="text"/>	
<input checked="" type="checkbox"/> Heat	<input type="checkbox"/> Recreation facilities	<input checked="" type="checkbox"/> Free laundry	<input type="checkbox"/> Furniture	Other: <input type="text"/>	
<input type="checkbox"/> Additional information: <input type="text"/>					

The Tenants are seeking \$1,750.00 in compensation for two items.

- 1) \$1,350.00 – Loss of use of 5 rooms

On their application, the Tenants indicated they lost the use of 5 rooms (storage) in the rental unit from June 20, 2019, until the end of the tenancy (March 2020). The Tenants stated that they want \$150.00 per month (9x\$150.00=\$1,350.00) for the loss of these rooms. The Tenants explained that the Landlord removed the door to the back entrance

(storage area) of their rental unit on June 19 or 20, 2019, and ever since he did that, they have not been able to store their belongings properly, or use several of their rooms. The Tenants explained that their rental unit was on the backside of a commercial building, and as part of their tenancy agreement, they were given storage space, which included the areas the Landlord took away from them in June of 2019.

The Tenants stated that due to the Landlord removing a door that secured the storage area they were using, they lost the use of 2 storage rooms adjacent to this door on the upper/main floor area. Plus, the Tenants also stated that they lost the use of a storage room downstairs as well as the crawl space.

The Landlord explained that this building is a mixed-use building, with a commercial storefront on the front side of the building (not included in the tenancy agreement), and a residential rental unit abutting the back of the store. The Landlord stated that in between the commercial side of the building, and the rental unit in the back, is a series of rooms and storage areas. The Landlord explained that one of the rooms the Tenant is referring to as "their storage area" was actually a commercial refrigeration room from when there was a store in the front. The Landlord stated that this area was never included as part of the tenancy agreement for storage, although the Tenants started using the room temporarily without permission.

The Landlord clarified that this series of storage rooms can be accessed through the front side of the building (store front) and also through the Tenants side in the rear. The Landlord explained that in order for the Tenants to get from the upper part of their rental unit to the lower bedrooms, they had to use the stairs, which routed through the storage room (near the old commercial refrigerator room). The Landlord pointed out that there was no "storage" included in the tenancy agreement, and they never gave permission for the Tenants to store things in these rooms.

The Landlord noticed, after viewing the property several months after the Tenants moved in, that the Tenants had put some of their items in the rooms that abutted the rental unit. The Landlord requested the Tenants remove their belongings so that they could have proper access for repairs and for real estate showings. The Landlord acknowledged that he removed the door between the commercial portion and the connecting section so that the tradesmen he hired could more easily access the gas, furnace, electrical panel, and hot water tank.

The Landlord provided a drawing of the rental unit and further explained (as per exhibit 3 in his evidence), that the only way to access the hot water tank and the furnace for the

whole building (for both commercial and residential portions) was through a set of stairs that leads from the main floor commercial area abutting both the commercial portion and the residential portion, to the basement. In the basement, the Tenants had a couple more distinct rooms for their use (3 bedrooms). The Landlord explained that on this lower level, in addition to the 3 bedrooms included under the tenancy agreement, there was also a large crawl space next to the furnace and hot water tank, which the Tenants took as storage without the consent or approval of the Landlord. The crawl space is located underneath the commercial area of the building. The Landlord stated that the majority of the square footage in the lower floor was for the crawl space, the furnace room, the hot water tank area, and the stairs, none of which were for the Tenants use or for storage.

The Landlord stated that the Tenants were only allowed into areas between the commercial portion and the residential portion areas for access purposes, not for storage. The Landlord acknowledged that the Tenants required entry to the disputed area so that they could get to the bedrooms on the lower level of the building.

The Landlord explained that the electrical panel for the whole building is also located in the area in between the front and the back of the building, near the staircase, the stairs to the basement, and the old commercial refrigeration room. The Landlord referred to this area as the “connecting section”.

2) \$400.00 – Compensation for loss of hot water and heat

The Tenants are also seeking \$400.00 in compensation for having no hot water and heat for 6 weeks in June of 2019. The Tenants stated that there was an issue with the gas service, which provided hot water and heat for the house. The Tenants stated on their application that they were without these services for 6 weeks. During the hearing, I asked which 6 weeks the Tenants had no heat, gas, or hot water, they were unclear and could not explain when the issue started. The Tenants also provided a letter they wrote to the Landlord which states that they were without gas for 3 or 4 weeks, but again, no dates were provided.

The Landlord acknowledges that there was an issue with the gas and the hot water tank, and he stated that he fixed it as soon as he could. The Landlord explained that he had to procure tradesmen from out of town, as there was no one available locally (the rental unit is in a very small town). The Landlord stated that it took him no longer than a couple weeks to fix the issues.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did everything possible to minimize the damage or losses that were incurred.

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.

With respect to the first item on the Tenants' application, I note they are seeking 9 months x \$150.00 per month for the loss of use of the different storage rooms and crawl space. I note the parties do not agree with respect to the use of the rooms. The Tenants assert that they were allowed to use the areas for storage (rooms between front and back of building, staircase area, lower utility rooms, crawl space). However, the Landlord stated that they never gave permission for this to occur. I note the Tenants over the course of several months, started using the disputed areas for storage, and it appears this became an issue when the Landlord saw what was going on and the impact it was having on access, and asked for it to be cleared out so that he could properly access the different utility areas which were common to the whole building, commercial and residential.

I accept that the Tenants would have had to travel through this middle disputed area, and would have occasionally had to access the electrical panel, or the lower furnace

area during the course of their tenancy. However, this does not equate to permission to use the space as storage. I note the tenancy agreement does not indicate any storage is included in rent. There is no evidence that the parties ever had a meeting of the minds on the disputed rooms such that I could find they had an agreement or permission to use those rooms for their personal storage.

I note that this is a unique building, not well suited for residential tenancies. The commercial spaces overlap with the residential portion in such a way that the Tenants could not get to part of their rental unit without travelling through the middle section. In any event, I do not find the Tenants have sufficiently demonstrated that they were entitled to use the extra rooms (for storage) they claim they lost use of in June 2019. It appears the Tenants were still able to travel through the disputed areas, and were still able to access the lower bedrooms by using the staircase in the disputed middle section of the building.

Ultimately, I do not find the Tenants have sufficiently demonstrated that they are entitled to compensation for the loss of use of the storage rooms, as there is insufficient evidence they were lawfully entitled to use these rooms as part of their tenancy agreement. I dismiss this item in full, without leave.

Next, I turn to the Tenants' second item, which is \$400.00 for not having heat or hot water for a significant period of time. I note the Tenants, on their application, stated that they were without gas, hot water, and heat for 6 weeks. The Landlord stated it was not this long and he fixed it as soon as he could, given the limited availability of tradespeople. The Landlord stated it took no longer than a couple of weeks. The Tenants submitted a letter which they wrote stating that the gas was off for 3 weeks.

During the hearing, the Tenants were asked which weeks the gas was off. However, they were not clear and they could not explain when exactly the issue started. I find the Tenants have provided an internally inconsistent and unclear explanation as to when the issue occurred, such that I could find they are entitled to compensation for the loss of these utilities. I accept that these utilities were supposed to be included under the tenancy agreement, and that there may have been some service interruptions. However, the onus is on the applicant to sufficiently explain and detail what they are seeking. In this case, I find the Tenants have failed to sufficiently explain in a clear manner what period of time the gas was off for.

I dismiss this item, in full, without leave. As the Tenants were not successful with their application, I decline to award them recovery of the filing fee.

Conclusion

The Tenants' application is dismissed, in full, without leave.

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: May 26, 2020

Residential Tenancy Branch