Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, MNDCT**

Introduction
The words tenant and landlord in this decision have the same meaning as in the Act, and the singular of these words includes the plural.

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

- Authorization to recover the filing fee for this application from the landlord pursuant to section 72; and
- A monetary order for damages or compensation pursuant to section 67.

The tenant KR attended the hearing ("tenant") and the landlord VC also attended the hearing ("landlord"). As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Preliminary Issue
At the commencement of the hearing, the landlord sought to have the tenant's application dismissed based on the grounds that the issues before me were previously dismissed by an arbitrator at a hearing on June 14, 2019. The case reference number is noted on the cover page of this decision and a copy of the decision was provided as evidence by the landlord.

I reviewed the previous decision made on June 14th and determined that the previous arbitrator exercised her discretion and dismissed *with leave to reapply*, the tenant's application seeking a dispute to rent increase and a monetary order. The issues of tenant's request to set aside a notice to end tenancy and the filing fee were ultimately

settled by consent during the hearing. Also agreed upon was that the tenant's responsibility to pay outstanding rent.

As the tenant's application seeking a monetary order was previously dismissed ***with leave to reapply***, I consider the application before me the tenant's reapplication which was previously authorized by the arbitrator on June 14th. As such, this application proceeded and the landlord's oral application to dismiss the tenant's claim was denied.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?
Can her filing fee be recovered?

Background and Evidence

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. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

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.

In her application and monetary order worksheet, the tenant seeks the following:
"we lived at the address for 14 yrs. and claiming for my other 3 mo. Am claiming for previous 9 mo. Due to construction, loss of privacy, quiet & enjoyment of life. We received a $250. rent increase prior to construction."

Item	***amount***
3. mo. Rent	*$3,750.00*
9 mo. For loss of enjoyment, privacy, quiet	*$11,250.00*
Moving & supply costs	*$724.88*
Address & postage costs	*$100.47*
Copy costs	*$105.28*
Filing fee	*$100.00*
Total	***$16,030.63***

The parties agree on the following facts. The rental unit was the lower unit in a house with an upper and lower unit at the commencement of the tenancy. During the tenancy, the landlord built a legal laneway house on the property.

The tenant gave the following testimony. The tenancy began on February 14, 2015. Rent was originally set at $1,000.00 per month plus 1/3 utilities, but was $1,250 by the time the tenancy ended. A security deposit was collected by the landlord but was returned at the end of the tenancy.

The tenant testified that she was given less than 2 months rent as compensation when the tenancy ended. This tenancy was a 14 year tenancy and because the duration of the tenancy was 14 years, she is entitled to 4 months compensation because the landlord ended it.

Regarding the 9 months rent compensation, the tenant gave the following testimony. In October 2017, the landlord verbally asked the tenant to raise the rent from $1,000.00 to $1,250.00. The tenants could not afford to do so immediately but agreed to the rent increase commencing in March 2018. The tenant thought the rent increase was astronomical, but because the tenant was having hip surgery and other health issues, she not in a position to move out. She didn't dispute the rent increase at the time because it wasn't in her best interest. The landlord assured her that she wouldn't be bothered by any construction he was about to commence on the property. She continued to pay the increased rent up until the day the tenancy ended.

The landlord testified that when the laneway house construction began in early October 2018, fencing was erected across her walkway and stairway leaving no exit out. If emergency services were required, access to the unit would have been blocked although no testimony of such an occurrence was provided. The tenant was forced to use an alternate access route to get into her unit, requiring her to go onto the neighbour's property. Open trenches were dug and left open during construction making a safety hazard for her and her guests. Throughout the construction, the tenant took photographs and those photos were provided as evidence. There was a period where the water was shut off to her unit for 36 hours where she could not use the toilet or take a shower and the landlord told her to use the portable toilet outside during this period. No specific date was provided for this incident.

The tenant testified that she called her insurer to see what could be done however she was "ignorant of her rights" as a tenant and didn't call the Residential Tenancy Branch or file for a dispute resolution to seek remedies while the construction was going on.

She testified that it wasn't until April 24, 2019 that she learned she had rights as a tenant.

The tenant testified she had to pay moving costs to get out of the rental unit when the tenancy ended. Second, she had to pay Canada Post for address forwarding services at the end of the tenancy. Lastly, the costs incurred at the stationary supply store were required to pursue this application against the landlord. The tenant testified that the landlord must reimburse her for these items because "he evicted us".

The landlord provided the following testimony. Regarding the rent increase, the landlord discussed it with the tenants, saying he was unable to afford supplementing the tenants with rent set less than market rate for the neighbourhood and asking them if they were willing to pay more. Both the tenant and the co-tenant agreed and started paying the agreed to amount.

Regarding the construction of the laneway house, the tenant never once went to the city or the police to lodge a complaint. No written complaints were made to either the contractor building the laneway house or to the landlord. The landlord testified that the tenant didn't make any verbal complaints during the construction, either. Instead, the tenant took photos of the property without advising the landlord of the purpose of the photos. Most importantly, the tenant didn't file any application with the Residential Tenancy Branch seeking any orders against the landlord while the construction was going on.

Analysis

Turning to the tenant's monetary order worksheet, each item will be dealt with in order.

The tenant seeks 3 months additional compensation for "being evicted" after living in the rental unit for 14 years. She testified that she understood that the amount of compensation given to a tenant for being "evicted" is tied directly to the length of time the tenant had been living in the rental unit. The Residential Tenancy Act has no such provision linking compensation to length of tenancy. This portion of the tenant's application is dismissed without leave to reapply.

I note that in the previous settlement agreement dated July 14, 2019 before the previous arbitrator, the parties agreed to the tenants not having to pay rent for the month of July 2019 as compensation for receiving a notice to end tenancy (term 3 of the settlement agreement). One month's compensation is the maximum amount a tenant

can recover for being served with a notice to end tenancy under section 51 and I find this was already achieved by the landlord not collecting July 2109 rent.

The tenant's second claim is for 9 months rent for loss of enjoyment, privacy and quiet during the construction of the laneway house. 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.

In this case, the tenant has provided insufficient evidence to establish the existence of the damage (Point 1). The tenant stated that she was inconvenienced by having to access the unit by going through the neighbour's yard, however I cannot determine the extent of the inconvenience based on the photos. Second, while she submits that the construction barriers could have potentially prevented emergency services to access her unit, no evidence of emergency services actually being prevented from accessing the rental unit was provided. The Residential Tenancy Act does not provide parties with the capacity to seek compensation for potential or possible future breaches of the Act. Lastly, no details regarding the 36 hours without running water was presented including dates or evidence other than that of the tenant's testimony.

Further, the tenant arbitrarily chose compensation of 9 full month's rent recovery for being inconvenienced by the laneway house being built <u>without any basis for how she arrived at that figure.</u> Tenants must pay full rent when it is due pursuant to section 26 of the Act, unless the tenant has a right to deduct all or a portion of it. The tenant has not

provided sufficient evidence to show the value of the perceived damage estimated by the tenant to be a full 9 months worth of rent. (Point 3 of the 4-point test). Neither case law where similar facts leading to an award of 9 months compensation was presented, nor was any scale for determining how to assess damages provided.

Lastly, the tenant provided insufficient evidence to show she took steps to mitigate the damage she seeks compensation for. Residential Tenancy Branch Policy Guideline PG-5 [Duty to Minimize Loss] states:

> *A landlord or tenant claiming compensation for damages or loss has a legal obligation to do whatever is reasonable to minimize the damage or loss. A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.*

If the tenant perceived the landlord was violating the Act, regulations or tenancy agreement during the construction, she had a variety of avenues to prevent the ongoing damage she allegedly suffered. She did not present corroborative evidence of seeking remedies from the contractor, the landlord or the Residential Tenancy Branch. The person claiming compensation has the burden of proving they minimized the damage or loss. I find the tenant has provided insufficient proof that she did so (point 4 of the 4-point test).

For the reasons stated above, the tenant's claim for 9 month's rent is dismissed without leave to reapply.

The tenant seeks compensation for moving and supply costs and for forwarding address services of Canada Post. I note that the tenant and the landlord mutually agreed the tenancy would end at the hearing held before the arbitrator on June 14, 2019. As the tenant willingly agreed that the tenancy should end, I do not find the landlord has breached any term of the tenancy agreement, Act or regulations. The claims for moving costs and address and postage costs are dismissed without leave to reapply.

Section 72(1) of the Act provides that an Arbitrator may award one party recovery of the filing fee from the other party; however, the Act does not provide for recovery of other

costs associated with making an Application for Dispute Resolution, gathering evidence, copying evidence or serving hearing documents. The tenant's application seeking to recover the costs involved in pursuing this claim are dismissed without leave to reapply.

The issue of disputing a rent increase was not included in the tenant's monetary order worksheet and no specific monetary claim was made for it. I make no finding regarding the merits of that issue raised on the tenant's application description that was not specifically sought in the monetary order worksheet or itemized as a separate issue in her application.

As the tenant's application was not successful, the tenant is not entitled to recovery of the $100.00 filing fee for the cost of this application.

Conclusion

The 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: October 16, 2020

Residential Tenancy Branch