



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF, OLC, FFT, MNDCT

Introduction

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord testified that she did not receive the tenants' dispute resolution package until November 3, 2020, but confirmed that she wished to proceed with the hearing as scheduled. As the parties were in attendance and confirmed that they had received and had the opportunity to review each other's evidentiary materials, the hearing proceeded as scheduled.

Issues

Are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order to the landlord to provide services or facilities required by law?

Are the tenants entitled to recover the cost of the filing fee from the landlords for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy began on December 3, 2019, with monthly rent currently set at \$2,400.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$1,200.00, which the landlord still holds. The tenants confirmed in the hearing that they plan on moving out by November 30, 2020.

The issues referenced in the tenants' application were discussed with both parties at the beginning of the hearing. The tenants expressed concern about the landlord's original intention to remove their laundry facilities. The landlord confirmed in the hearing that this facility has not been removed, and the landlord confirmed that the tenants would continue to have access and use of this facility until the end of this tenancy.

The tenants also expressed concern that the landlord had intentions to begin construction on the property while the tenants were still residing there. The landlord confirmed in the hearing that she would not begin construction inside their rental unit until the tenancy has ended.

The tenants confirmed the other outstanding issues they wanted addressed. The tenants are requesting an order that the landlord continue to provide them with access and use of the storage shed and mud room, and that the landlord refrain from moving in until this tenancy has ended. The tenants testified that they had use of these areas since the beginning of this tenancy.

The tenants are also requesting monetary compensation in the amount of \$2,400.00, which is the equivalent of half a month's rent for the months of August and September 2020 in compensation for harassment and interference of their quiet enjoyment by the landlord, as well as recovery of the filing fee. The tenants testified that the landlord had attempted to restrict services, avoid repairs, and make frequent, unannounced visits in

an attempt to persuade the tenants to end the tenancy and avoid having to issue a 2 Month Notice and compensate the tenants.

The landlord responded that the storage shed and mud room were not included in the tenancy agreement for the tenants' exclusive use, and that these areas were considered common areas. The landlord testified that these areas were shared with the other tenants in the home, and the tenants cannot be given exclusive access to these areas.

The landlord disputes the allegations of harassment, and denies attending inside the rental units without proper notice or permission. The landlord testified that the other tenants had given her permission to attend to deal with various matters, and disputes the tenants' allegations of frequent visits in an attempt to harass the tenants or avoid the *Act*.

Analysis

The tenants requested that the landlord continue to provide laundry facilities until the end of this tenancy, which the landlord agreed to in the hearing. Similarly, the tenants requested that the landlord not begin construction until the tenancy has ended. The landlord confirmed in the hearing that this would not begin until the tenancy has ended. As these matters have been resolved by way of mutual agreement, and order that the landlord comply with these agreements.

The tenants made an application to ensure that they would continue to have access to the storage shed and mud room until the end of the tenancy.

Section 27 Terminating or restricting services or facilities, states as follows,

- 27** (1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
 - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find that for the purposes of this matter pursuant to Section 27(2)(b) and 65 that use of storage facilities are considered a qualifying **service or facility** stipulated in the **Definitions** of the *Act*.

I have reviewed the tenancy agreements submitted, and I note that although that these specific storage facilities were not listed as included facilities on the tenancy agreement, I accept the tenants' testimony that they had used these areas since the beginning of the tenancy. However, In light of the evidence before me, I am not satisfied that these areas were included in the tenancy agreement as facilities designated for the tenants' exclusive use. I am satisfied that the tenants have had access to share these two areas with the landlord and other tenants. Accordingly, I dismiss the tenants' application for exclusive use of these two areas. I order that the landlord continue to allow the tenants to use these two areas as a shared space with the landlord and other tenants until this tenancy has ended in accordance with the *Act*.

I am not satisfied that the tenants had provided sufficient evidence to support that the landlord has entered their rental unit in contravention of the *Act*. However, I remind the landlord that she must abide by section 29(1) of the *Act* as set out below, and refrain from taking possession of the rental until the tenants have moved out.

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the

entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

Lastly, the tenants made a monetary claim for compensation in the amount of \$2,400.00 for harassment and breach of their peace and quiet enjoyment by the landlord.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) 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.

(2) 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.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss.*

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it

stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 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.”

I have reviewed the evidence and testimony presented by both parties. Although I find that there were several disagreements during this tenancy, including disputes over the landlord’s right to access certain portions of the home for various reasons, restrict services or facilities, and landlord’s willingness to fulfil her obligations under the *Act*, I am not satisfied that the tenants have satisfied the required components as set out above. As stated above, the burden of proof is on the tenants to support their loss associated with the other party’s non-compliance. Although the tenants suspected that the landlord had conducted herself in a manner to avoid her obligations to end the tenancy in accordance with the *Act*, I am not satisfied that the tenants provided sufficient evidence to support this was the landlord’s intention. Furthermore, I am not satisfied that the tenants met the burden of proof to support the value of the loss claimed. The tenants requested the equivalent of half of monthly rent for August and September 2020. However, I find that they did not establish how this estimate was obtained, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support value of the loss the tenants are seeking in this application. On this basis I dismiss the tenants’ monetary claim without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As part of the tenants’ application was resolved by way of mutual agreement, and the remainder was dismissed, the tenants must bear the cost of this filing fee.

Conclusion

I order that the landlord comply with the agreements confirmed in the hearing. I also order that the landlord continue to comply with the *Act* and tenancy agreement until this tenancy has ended.

I dismiss the tenants’ application for exclusive use of the storage shed and mud room. I order that the landlord continue to allow the tenants’ use of these two areas as a shared

space with the landlord and other tenants until this tenancy has ended in accordance with the *Act*.

I dismiss the remaining portion of the tenants' application 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: November 25, 2020

Residential Tenancy Branch