Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

Preliminary Issue- Service

Both parties agree that the landlord was served with the tenants' application for dispute resolution and a usb stick containing the tenants' evidence, via registered mail. I find that the tenants' application was served in accordance with section 89 of the *Act.*

The landlord testified that she was not able to access the evidence contained on the usb stick. The tenants testified that they did not confirm with the landlord that she was able to view the evidence on the usb stick.

Rule 3.10.5 of the Residential Tenancy Branch Rules of Procedure (the "*Rules"*) states in part:

> Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence….
>
> If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

Pursuant to the above, I find that the tenants' evidence is inadmissible and will not be considered, because the landlord was not able to review and respond to it.

The landlord testified that the tenants were not served with her evidence.

Section 3.15 of the *Rules* states that the Respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

As the landlord did not serve the tenants with her evidence, pursuant to section 3.15 of the *Rules,* I find that the landlord's evidence is inadmissible and will not be considered, as the tenants did not have an opportunity to review and respond to it.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. The tenants completed a virtual tour of the subject rental property before signing a tenancy agreement starting August 1, 2020. The

tenants were moving from out of Province and were not able to view the subject rental property in person before moving in. Monthly rent in the amount of $1,950.00 was payable on the first day of each month. A security deposit of $975.00 was paid by the tenants to the landlord. The tenants moved into the subject rental property on August 2, 2020.

The tenants testified that the landlord misrepresented the condition of the subject rental property and that the following major deficiencies were not made known to them before they signed the tenancy agreement:

- the floor was “wildly uneven”;
- the fridge was tipping due to the slopped floor;
- the cabinets, fridge and oven were dirty;
- the faucet was improperly installed;
- the dishwasher was not working;
- the toilet was not working properly;
- the patio roof was rotting and falling apart; and
- an outlet wasnot installed properly.

The tenants testified that there were many other cosmetic issues, and some other non cosmetic issues.

The tenants testified that given the above issues, they did not want to continue the tenancy. Both parties agree that the landlord offered to let the tenants out of the fixed term lease. Both parties agree that the tenants emailed the landlord on August 2nd with their notice to end tenancy effective September 1, 2020. Both parties agree that the tenants moved out of the subject rental property on August 7, 2020 and returned the keys to the landlord on or around August 14, 2020. Both parties agree that the landlord returned the tenants’ security deposit on August 14, 2020.

The tenants testified that they only gave their notice via email on August 2, 2020 because they were afraid they might not have another opportunity to cancel the lease.

The tenants testified that they moved into a new property on August 7, 2020 at a rental rate of $1,800.00 per month and paid a pro-rated amount for August 2020’s rent.

Both parties agree that the landlord did not complete a move in condition inspection report with the tenants.

The tenants testified that the landlord breached sections 7(2) and 10(1) of the tenancy agreement and sections 23, 32 and 33 of the *Act.* The tenants testified that they are seeking the return of August 2020's rent due to the above breaches.

The landlord testified that the subject rental property was newly renovated when the tenants moved in and that she did not misrepresent the condition of the subject rental property. The landlord testified that the tenants had a virtual tour of the property and saw for themselves the condition of the property before they signed the tenancy agreement.

The landlord testified that the tenants did not give her an opportunity to fix any of the issues they reported because they gave notice to end the tenancy on August 2, 2020. The landlord testified that she believed the appliances and toilet were working when the tenants moved in.

Analysis

Section 67 of the *Act* states:

> Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means

that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

As no evidence from either party was admitted for consideration, I find that I am not able to determine if the tenancy agreement was breached. I am however, able to consider the tenants' claims for breach of the *Act.*

Section 23 of the *Act* states:

> **23** (1)The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
> (2)The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
> (a)the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
> (b)a previous inspection was not completed under subsection (1).
> (3)The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
> (4)The landlord must complete a condition inspection report in accordance with the regulations.
> (5)Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
> (6)The landlord must make the inspection and complete and sign the report without the tenant if
> (a)the landlord has complied with subsection (3), and
> (b)the tenant does not participate on either occasion.

I find that in not completing a move in condition inspection report the landlord breached the *Act.* However, I find that the tenants have failed to prove how a breach of section 23

of the *Act* has resulted in damages. I therefore decline to award the tenants damages for the landlord's breach of section 23 of the *Act.*

Sections 32 and 33 of the *Act* state:

> **Landlord and tenant obligations to repair and maintain**
> **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.
>
> (2)A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
> (3)A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
> (4)A tenant is not required to make repairs for reasonable wear and tear.
> (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.
>
> **Emergency repairs**
> **33** (1)In this section, "emergency repairs" means repairs that are
>
> (a)urgent,
>
> (b)necessary for the health or safety of anyone or for the preservation or use of residential property, and
>
> (c)made for the purpose of repairing
>
> (i)major leaks in pipes or the roof,
>
> (ii)damaged or blocked water or sewer pipes or plumbing fixtures,
>
> (iii)the primary heating system,
>
> (iv)damaged or defective locks that give access to a rental unit,
>
> (v)the electrical systems, or
>
> (vi)in prescribed circumstances, a rental unit or residential property.

(2)The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3)A tenant may have emergency repairs made only when all of the following conditions are met:

(a)emergency repairs are needed;

(b)the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c)following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4)A landlord may take over completion of an emergency repair at any time.

(5)A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a)claims reimbursement for those amounts from the landlord, and

(b)gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6)Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a)the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b)the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c)the amounts represent more than a reasonable cost for the repairs;

(d)the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7)If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I find that the tenants have not proved that any of the issues they identified with the property meet the definition of “emergency repairs” under the *Act.* I find that the tenants have not proved that the landlord has breached section 33 of the *Act*.

Based on the testimony of both parties, I find that the renovation done to the subject rental property did not meet the standards of the tenants and that numerous deficiencies existed. However, I also find that the tenants have not proved that any of the listed deficiencies breached health, safety and housing standards required by law. No evidence was found to be admissible and no testimony regarding health, safety or housing standards was provided. In addition, I find that the tenants have not proved that the subject rental property was not suitable for occupation. A slopped floor and the other deficiencies listed, do not make rental property not suitable for occupation.

I find that the tenants have not proved, on a balance of probabilities, that the landlord breached the *Act,* tenancy agreement or the Regulation. Pursuant to section 67 of the *Act* and Policy Guideline 16, I dismiss the tenants' application without leave to reapply. As the tenants were not successful in their application for dispute resolution, I find that they are not entitled to recover the $100.00 filing fee for this application.

Conclusion

The tenants' application for dispute resolution 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: December 08, 2020

Residential Tenancy Branch