Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

The tenant seeks compensation under section 67 of the *Residential Tenancy Act* ("Act"), an order under section 62 of the Act, and, recovery of the application filing fee under section 72(1) of the Act.

The tenant filed an application for dispute resolution on September 11, 2020 and a hearing was held on December 22, 2020. The tenant and the landlords attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

Issues

1. Is the tenant entitled to any or all of the compensation sought?
2. Is the tenant entitled to an order under section 62 of the Act?
3. Is the tenant entitled to recovery of the filing fee?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

By way of background, the tenancy in this dispute began on February 13, 2020 and ended on October 27, 2020. Monthly rent was $1,500.00 and the tenant paid a security deposit of $487.50. No copy of a written tenancy agreement was submitted into evidence, though the tenant stated there was one.

The tenant is claiming $7,000.00 for, as described in her application, “I was living in my bedroom & paying my rent while demolition/construction was being done. I should have not been living here for Health & safety reasons. I also did all the cleaning DAILY.”

A Monetary Order Worksheet was submitted by the tenant, and the worksheet sets out claims for $1,000.00 for each of April, May and June 2020, and $500.00 for each of July and August 2020, for a total of $4,000.00. In addition, there are various claims for cleaning from April to August 2020 totalling $3,000.00. She seeks $1,000.00 because she did not have full access to the house during the renovations. The monthly amount of $500.00 is claimed when the renovations were starting to presumably wind down.

The tenant testified that there were discussions between the parties whereby the landlords would renovate the rental unit, starting with the kitchen and then moving throughout the property. The tenant agreed to the landlords’ proposed renovations. The renovations took place over the ensuing months and, according to the tenant, were still underway when she left in October. She remarked the renovations prevented from using the full rental unit, and that there were safety issues such as nails on the floor, baseboards removed, exposed electrical outlets, and things not put away properly.

In respect of the claim for cleaning, the tenant testified that she had to clean up extensively everyday after the renovations were done, and that she did lots of cleaning. She added that she had “talked a little bit” about the cleaning with the landlords, but that nothing definitive was agreed upon. Other than, she explained, that she believed there was an agreement with the landlords that they would compensate her. The landlord Bruce had asked the tenant to keep track of her hours. I asked the tenant whether she had kept any sort of log of the actual hours or time spent cleaning, to which she explained that she had not.

The landlords testified that much of what the tenant testified about was accurate. The landlord testified that they “had a meeting to discuss the ways and means to effect renovations” and that it would be a way to help the landlords and the tenant out. The tenant apparently had difficulty paying rent (due to the pandemic) and so the landlords offered reduced rent at some point. He reiterated that the renovations were “something we mutually agreed upon.” Further, he testified that both parties were aware of the scope and nature of the renovations, namely, that they would start with the kitchen and then expand onward.

There was, he noted, a conversation about the tenant cleaning the cabinets, and he had asked the tenant to keep track of the time spent cleaning that. In reference to the

dozens of photographs submitted by the tenant of the renovations, he explained that the photographs depict a narrow window of about 3 weeks at the beginning of the renovations, when things would look the most out of place. He added that he cleaned up every day after the work.

The landlords acknowledged that the tenant did not have full use of the rental unit during the renovations, but in an effort to ensure the tenant had a kitchen, they were able to arrange access to another occupant tenant's kitchen for a duration of time.

The landlord testified that there were "no signs of anxiety" or concern from the tenant throughout all of the renovations. (I note that the tenant started to have issues with the renovations after the landlords served her with a Two Month Notice to End Tenancy for Landlord's Use of Property.) Indeed, the landlord testified that the tenant "seemed to be enjoying the [renovation] process." Finally, the landlord acknowledged that while the tenant did suffer a loss of space, she is not entitled to the full amount as claimed.

Analysis

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 an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

> 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.

. . .

67 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.

The tenant claims compensation for loss of space, and for health and safety reasons. A basis for such a claim would derive from a breach of section 28 of the Act, which states:

> A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (a) reasonable privacy;
> (b) freedom from unreasonable disturbance;
> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 32(1) of the Act states that

> 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.

Where a landlord goes ahead and undertakes extensive renovations without either proper notice or a mutual agreement with the tenant, then certainly a breach under one or both of the above-noted sections of the Act might occur. However, the parties in this agreement had a discussion about the planned renovations, and the tenant agreed to the renovations occurring. While the tenant referred to no 24-hour notice being given,

the tenant appeared, by all accounts, to let either the landlords or a tradesperson into the rental unit on each and every day that they showed up to do renovations.

Section 29(1)(a) of the Act states that "A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies: […] the tenant gives permission at the time of the entry or not more than 30 days before the entry."

The tenant, by her words and conduct, implicitly and explicitly gave permission to the landlords to enter the rental unit during the renovations. She was fully aware of what the work that would be done and was aware of the work as it was being done on a week to week, month to month basis. There is no evidence before me to find that the tenant in any manner objected to what was a mutually-agreed-upon renovation. It only became, as the landlords have argued, an issue or a problem after the tenant received a notice to end the tenancy. Given the tenant's actions before and during the period of renovations, the legal doctrine of estoppel must be considered.

Estoppel occurs when one party to a legal claim is stopped from taking legal action that is inconsistent with that party's previous words, claims, or conduct. Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. In order to return to a strict enforcement of their right, the first party must give the second party notice (in writing), that they are changing their conduct and are now going to strictly enforce the right previously waived or not enforced.

In this case, the tenant's failure to make any effort during the five-month period of renovations to actually object to those renovations is consent for the landlord to renovate. Nor did she raise any health or safety issues with the landlords during the renovations. Indeed, the tenant actually agreed to the landlord coming in and renovating. She cannot now, after the tenancy has ended, attempt to enforce the very rights which she acquiesced to give up.

For these reasons, I find that the tenant is not entitled to claim compensation for the loss of space, or, for health and safety concerns. Accordingly, that aspect of her application (that is, the claim for $4,000.00) is dismissed without leave to reapply.

Turning to the second part of the claim – the cleaning – the tenant has not proven what section of the Act the landlords breached that lead to compensation. Setting aside for a

moment the fact that the tenant was aware of the renovations and would reasonably understand that there would be dust and construction detritus, there is no section of the Act under which the landlords are liable to pay the tenant for cleaning.

If there is a claim for compensation for services rendered and not paid for, and one that is outside of the tenancy agreement, such a claim would fall outside the jurisdiction of the *Residential Tenancy Act* and would likely fall under the *Civil Resolution Tribunal Act.* However, given that there was no written agreement between the parties for the landlords to pay the tenant for cleaning, and as the tenant kept no documentary evidence of the actual time spent cleaning, such a claim would likely fail.

Based on the above, I find that the tenant has not proven a breach of the Act by the landlords and as such is not entitled to any compensation. This aspect of her claim is dismissed without leave to reapply.

Third, the tenant had applied for an order under section 62 of the Act. However, her application merely states, “I’m not sure on this” and the tenant did not make any submissions in respect of this part of her application. As such, I dismiss this aspect of her application without leave to reapply.

As the tenant was unsuccessful in her application, I decline to award recovery of the $100.00 application filing fee.

Conclusion

I dismiss the tenant’s application, without leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: December 23, 2020

Residential Tenancy Branch