



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, MNDCT, RR, RP, PSF, OLC, FFT

Introduction

The Tenant filed their Application for Dispute Resolution (the “Application”) on December 20, 2021. They seek the following:

- a) compensation for the cost to them of emergency repairs they made during the tenancy;
- b) compensation for monetary loss or other money owed
- c) reduction in rent for repairs, services or facilities agreed upon but not provided
- d) repairs made to the rental unit, after contacting the Landlord in writing
- e) provision of services or facilities required by the tenancy agreement/law
- f) the Landlord’s compliance with the tenancy agreement and/or legislation
- g) reimbursement of the Application filing fee.

The matter proceeded by hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 31, 2022.

Both the Tenant and the Landlord attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present affirmed testimony during the hearing.

Preliminary Matter – Landlord’s service of their prepared evidence

At the outset of the hearing the Landlord confirmed they received notice of this hearing and the Tenant’s prepared evidence via registered mail. The Tenant throughout their testimony in the hearing referred to text messages on their phone and witness

accounts. The Landlord restated throughout the hearing that the evidence provided was limited to what the Tenant submitted and presented to them at the outset.

The evidence before me is limited to that submitted by the Tenant with this Application. Because this was shared with the Landlord, it receives full consideration. Though the Tenant mentioned additional evidence they had in their possession, they did not submit that for this hearing, and the Tenant did not attend the hearing with witnesses. I have not allowed any opportunity for additional evidence to be submitted because the Tenant did not make that specific request.

The Landlord provided their evidence to the Tenant via registered mail. They provided a record of that in the form of the postal receipt from March 17, 2022, and the registered mail label bearing the tracking number. The tracking history shows the item was available for pickup on March 21. This meets the seven-day restriction for a respondent's evidence submitted to the Residential Tenancy Branch, and to the Applicant here, as set out in the *Residential Tenancy Branch Rules of Procedure* Rule 3.15. Because the Landlord served their evidence as required, it receives my full consideration in this decision.

Preliminary Matter – Landlord's compensation

For this matter, the Landlord did not file a counterclaim for compensation. They provided evidence and spoke to the Tenant's non-payment of rent, and in the hearing attempted mediation on those issues. I find the amount in question relates directly to the Landlord's current process of ending of the tenancy for that reason, and that is the subject of another pending hearing at the Residential Tenancy Branch. Additionally, the Tenant was not open to the subject of mediation. I did not grant the Landlord's request for mediation in the hearing.

Issues to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Tenant entitled to a reduction in rent for repairs, services or facilities agreed upon, but not provided?

Is the Tenant entitled to repairs, or provision of services/facilities required by the tenancy agreement/law?

Is the Landlord obligated to comply with the tenancy agreement, the *Act*, and/or the *Residential Tenancy Regulation*?

Is the Tenant eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

In the hearing I confirmed the basic information about the tenancy agreement in place between the parties. The tenancy started in 2009. The Tenant stated the copy of the agreement submitted by the Landlord in their evidence was a fake, pointing to the lack of both their initials where indicated in the agreement. They signed an agreement with the then-landlord at the start of the tenancy in 2009 but did not do that with this Landlord when ownership changed. The Tenant agreed the rent amount is \$1,140 as stated on the agreement. The Tenant pointed out specifically that the Landlord indicated laundry was included in the rent.

The Tenant provided the background to their Application for this hearing. In about 2014 the basement started to flood, and this increased in frequency in 2017, with floods in the basement up to three times per year. The Tenant runs their own restoration company, so they were aware of the type of work needed. Because of the floods the Tenant had no use of the basement.

In approximately July 2021 the Tenant started to pay \$1,000 per month in rent, as they stated in the hearing. They notified the Landlord this was what they would pay until fixes were made. More specifically, they were asking for a toilet for six months, and also a stove and sink. The Tenant provided that they started paying the required amount of rent of \$1,140 again in October 2021.

The Tenant on their Application provided the amount of \$6,000 for rent amounts they paid. Alternately, they completed the Application with this showing as a reduction in rent for repairs, services or facilities agreed upon but not provided. This is a six-month timeframe for the rent they paid of \$1,000 per month, for having “no toilet no stove no heat, no kitchen sink.” They stated that in July 2021 they began to message the Landlord to say, “I need a toilet”, and this continued for the following month of August,

and then through to November. They asked for a toilet for six months in total, having to either go to a nearby public washroom, or improvise when at home.

In their evidence, the Landlord addressed the issue of their provision of appliances to the Tenant. They provided a receipt dated March 1, 2022 for a stove they purchased for the Tenant, giving this item to the Tenant. They also provided an invoice for \$911.12 showing work completed on December 10, 2021 for heat in the rental unit, and work completed on December 17, 2021 for replacement of the toilet, for \$1,1719.55. The Landlord's position is that they became aware of these items only more recently, and thus addressed these items on a priority basis. The toilet replacement, in particular, was not known about in August as the Tenant stated.

The Tenant rebutted this by stating they have a record of their text messages to the Landlord informing them of the issue from September onwards, attaching pictures showing their situation within the rental unit. The Tenant provided a message dated July 26, 2021 showing their request for a plumber because "I have not been out of a toilet for a week", and August 18, stating "And I need a plumber. . ."

The Tenant provided that they started paying the full amount of rent, at \$1,140, again in October 2021. They maintain that they do not owe any amount of rent outstanding, stating clearly in the hearing: "if I pay the service guy, that comes off rent and the Landlord knows that."

Additionally, the Tenant claimed that an amount of \$5,000 is the equivalent of the work they did cleaning the gutters at the rental unit. The Landlord refuses to undertake this work, and if the Tenant asks for the work to be completed and the Landlord does not answer, the Tenant will go ahead and clean it on their own. They did this "countless times" as they presented in the hearing. This typically is a charge of \$265, plus however long it takes to clear the gutters. The Tenant also mentioned work completed in relation to the flooding.

In relation to both pieces of the Tenant's claim for compensation, the Landlord noted they did not receive any evidence on the costs or expenses set out by the Tenant here. From the Landlord's perspective, there was no evidence of the Tenant proffering amounts for reduced rent, either for lack of amenities or work they completed with the Landlord's approval. The Tenant, in response to this, again alluded to messages present on their phone in the form of text messages.

The Landlord also presented that the work for completion of the toilet repair is completed, though the Tenant refused to accept delivery of the stove they purchased. The receipt for this is dated March 1, 2022. In their materials, the Landlord also provided their record of the latest rental unit inspection visit, set out in a comprehensive room-by-room report.

On their Application, the Tenant also provided the following information:

- On their request for repairs, after they had made the request to the Landlord in writing, they noted the toilet, heat, laundry, sink as well as lack of one of the bedrooms in the rental unit.
- The Tenant also noted the Landlord's threats of eviction when they complained about the basic services or facilities required by the tenancy agreement and the law.
- To plead for the Landlord's compliance with the *Act*, the regulation and/or the tenancy agreement, the Tenant set out their need to live normally within the rental unit, not having to constantly alter their lifestyle for the grave deficiencies present within the rental unit that the Landlord would not repair. These are "simple things in life."

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss an 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.

The Landlord's obligation to provide and maintain a residential property in a suitable state of repair is set out in s. 32 of the *Act*. This is a state of decoration and repair that "complies with the health, safety and housing standards required by law", and suitability for occupation by a tenant.

Overall, I find the Tenant has not provided sufficient evidence to show they made ongoing requests for repairs to appliances and the toilet within the rental unit. The Tenant alluded to messages present on their phone; however, they did not provide this for the hearing as required. Because of this, I find there was no breach of the duty for basic repairs in the rental unit, because the Landlord was not fully aware.

Similarly, the Tenant did not provide sufficient evidence to show the degree of flooding in the basement was restricting the use of that area. In order to successfully show the Landlord breached the s. 32 duty conferred by the *Act*, a substantial amount of evidence must be in place to show the Landlord ignored the issue or did not undertake repairs or remediation in a timely manner. That evidence is lacking in this Application.

The onus is on the Tenant to provide that proof, and in this hearing they did not do so. Because of this, I dismiss the Tenant's claim for \$6,000 as reimbursement for rent they paid over the time period they allege their requests were ignored. The Tenant alternately applied for a rent reduction in this same amount; I dismiss this piece of their Application as well. There is insufficient evidence that the Landlord was aware of the problems within the unit, and made no repairs or replacement.

The Tenant did not prove the value of the loss to them in their claim for \$5,000 for work they completed on gutters. There was a loose approximation of the work involved from the Tenant in the hearing; however, for this amount of an award a stricter accounting is necessary. As above, the Tenant did not provide evidence to show they made a request for gutter cleaning to the Landlord which was then ignored. The Tenant stated they did this "countless times"; however, when establishing a value of the true work involved for which they should be fairly compensated, more accurate accounting is necessary. I dismiss this piece of the Tenant's claim for these reasons.

The Tenant set out their experience living in the rental unit without repairs or the provision of basic services or facilities as set out in the tenancy agreement. The photos they provided illustrate this experience further. Counter to this, and receiving greater weight in my evaluation, is the evidence provided by the Landlord showing their completion of the provision of a new stove, heat, and a toilet with installation. I find the

Landlord at this stage has responded to the Tenant's requests and made the necessary repairs. The Tenant must allow delivery or pick up the stove on their own; there is no reason to not accept the stove delivery and then continue to claim an incomplete repair or lack of an amenity.

With the Landlord's evidence showing repairs completed, I dismiss each of the Tenant's claims for repairs, the provision of services or facilities, and the Landlord's compliance with the law and/or tenancy agreement.

Because the Tenant was not successful in this Application, I dismiss their claim for reimbursement of the Application filing fee.

Conclusion

The Tenant's 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 s. 9.1(1) of the *Act*.

Dated: April 29, 2022

Residential Tenancy Branch