Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL
MNDCT, RR, FFT

Introduction

This hearing dealt an Application for Dispute Resolution filed by the Landlord (the Landlord's Applications) on November 23, 2021, under the *Residential Tenancy Act* (the *Act*), seeking:

- Compensation for damage caused to the rental unit or property by the Tenant, their guests, or their pets;
- Authorization to withhold the security deposit; and
- Recovery of the filing fee.

This hearing also dealt with an Application for Dispute Resolution filed by the Tenant (the Tenant's Application), on August 10, 2021, under the *Act*, seeking:

- Compensation for monetary loss or other money owed;
- A rent reduction for repairs, services, or facilities agreed upon but not provided; and
- Recovery of the filing fee.

The hearing of the Tenant's Application was originally convened by telephone conference call before Arbitrator Ceraldi on December 14, 2021, at 9:30 AM and from the Interim Decision dated December 14, 2021, it appears that it was attended by the Tenant and the Landlord, both of whom provided affirmed testimony. It also appears that the hearing was adjourned by mutual agreement of the parties, to allow the Landlord's Application and the Tenant's Application to be crossed and heard together at the Landlord's scheduled hearing on June 27, 2022, at 1:30 PM. Residential Tenancy Branch (Branch) records indicate that a copy of the Interim Decision dated December 14, 2021, and a copy of the Notice of Hearing for June 27, 2022, were sent to each party by the Branch via email, as requested by the parties in their respective

Applications, on December 15, 2021. In the Interim Decision Arbitrator Ceraldi stated that they were not seized of the matter, and therefore the reconvened hearing was scheduled before me.

The hearing was reconvened by telephone conference call on June 27, 2022, at 1:30 PM and was attended by the Tenant, who provided affirmed testimony. Neither the Landlord nor an agent acting on their behalf attended the hearing. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that respondents must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. As Arbitrator Ceraldi did not address service of the Notice of Dispute Resolution Proceeding (NODRP) for the Tenant's Application or service of the NODRP for the Landlord's Application at the original hearing, and the Landlord did not attend the reconvened hearing, I inquired about service of these documents as explained below.

The Tenant stated that they sent their NODRP to the Landlord by registered mail on approximately August 29, 2021, and provided me with the registered mail tracking number, which I have recorded on the cover page for this decision. The Tenant stated that they checked the registered mail tracking system, and the package was delivered on September 3, 2021, and a signature was taken. As set out in the Interim Decision by Arbitrator Ceraldi, the Landlord attended the original hearing on December 14, 2021, which was the hearing date originally scheduled for the Tenant's Application. As a result of the above, I find that the Landlord was served with the Tenant's NODRP on September 3,2021, by registered mail in accordance with the *Act* and the Rules of Procedure. The Tenant also provided affirmed testimony that they served their documentary evidence on the Landlord on three separate occasions as follows. The Tenant stated that the NODRP package, which was sent via registered mail as set out above, contained some of their documentary evidence, that a second package containing documentary evidence and an amendment to their Application were sent to the Landlord by registered mail on approximately November 28, 2021, and that all remaining documentary evidence before me was sent to the Landlord by registered mail on June 10, 2022.

Based on the affirmed and uncontested testimony of the Tenant, I find that the above noted documents were served or deemed served as follows:

- Evidence package 1, served on September 3, 2021;

- Evidence package 2 and the amendment to the Application, deemed served on December 3, 2021; and
- Evidence package 3, deemed served on June 15, 2022.

As a result, I have accepted the documentary evidence before me from the Tenant for consideration, and I have amended the Tenant's application in accordance with the amendment to the Application for dispute resolution.

As the Tenant acknowledged service of the Landlord's NODRP and evidence in two separate packages, roughly two weeks apart, and raised no concerns with regards to service dates or methods, I find that the Tenant was served with the Landlord's NODRP and the documentary evidence before me from the Landlord in accordance with the *Act* and the Rules of Procedure. However, neither the Landlord nor an agent acting on their behalf attended the 59-minute hearing on June 27, 2022, despite the fact that this was the originally scheduled hearing date and time for the Landlord's Application, and the fact that the Landlord was sent copies of this NODRP by the Branch on two separate occasions, once on November 25, 2021, and once on December 15, 2021, along with a copy of the Interim Decision. As I am satisfied the Landlord was provided with the NODRP by the Branch as set out above, as I verified at the time of the hearing that the hearing information contained in the NODRP was correct, and as the Tenant was able to attend the hearing on time using the information contained in the NODRP served on them by the Landlord and provided to them by the Branch, the hearing therefore proceeded as scheduled despite the absence of the Landlord or an agent acting on their behalf. However, pursuant to rule 7.3 of the Rules of Procedure, I dismissed the Landlord's Application without leave to reapply and the hearing proceeded based on the Tenant's Application.

The Tenant was advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Tenant was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Tenant was also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

Although I am satisfied that all the documentary evidence before me was duly exchanged by the parties in advance of the hearing as required by the Rules of Procedure, rule 7.4 of the Rules of Procedure states that evidence must be presented

by the party who submitted it and may or may not be considered in the absence of that party at the hearing. As a result, I have only considered evidence presented by the party who submitted it when rendering this decision. I also refer only to the relevant and determinative facts, evidence, and issues in this decision.

Copies of this decision and any orders issued in their favour will be emailed to the parties at the email addresses provided by them in their respective Applications.

Issue(s) to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed?

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

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The one-year fixed term tenancy agreement in the documentary evidence before me from the Tenant, signed on May 16, 2017, states that the tenancy commenced on June 1, 2017, rent in the amount of $1,150.00 is due on the first day of each month, gas and electricity are included in the cost of rent, and a security deposit in the amount if $575.00 was paid on May 15, 2017. At the hearing the Tenant confirmed that the security deposit was paid as set out above and stated that it is still retained by the Landlord. The Tenant also stated that even though the Tenant and the Landlord shared a street address, this was not shared accommodation as the Landlord lived in a separate suite upstairs and they did not share either a kitchen or a bathroom.

The Tenant stated that the tenancy ended on September 30, 2021, and acknowledged that as of the date and time of the hearing, they had not yet provided the Landlord with their forwarding address in writing for the purpose of the return of all or part of their security deposit. The Tenant stated that no move-in condition inspection or report were completed at the start of the tenancy and that although a move-out condition inspection was completed at the end, a move-out condition inspection report was not completed together at the time of the move-out inspection as required, as the Landlord told them that they could not print one off in time. The Tenant also stated that the Landlord sent

them a move-out condition inspection report in October of 2021, but it had only been filled out by the Landlord and was not completed at the time of the inspection.

The Tenant stated that due to the Landlord's failure to properly maintain the rental unit, which was in an older home with poor ventilation and portions of the basement dug into the earth, there was a significant mould issue in the rental unit and numerous items belong to them were damaged by mould between October 4, 2020 – September 21, 2021. The Tenant stated that they were proactive in bringing the mould issue to the Landlord's attention on numerous occasions, and although the Landlord stated that they would look into the best solution to resolve the issue, they never did. The Tenant stated that the Landlord told them to increase ventilation in the rental unit, which they did, and to use a dehumidifier, but did not provide them with one. The Tenant stated that the Landlord also provided them with two bottles of mould killer, but every time they cleaned the mould, it simply returned.

The Tenant stated that the Landlord failed to act diligently with regards to investigating the cause of the mould, and completing any necessary repairs to stop the mould problem, and that this failure resulted in a significant devaluation of their tenancy, and loss of use and quiet enjoyment, as well as a loss of personal belongings. As a result, the Tenant sought $489.47 for the cost of items damaged by mould, $600.00 for labour and cleaning costs associated with the constant need to clean mould in the rental unit over a period of one year, and the return of 1/3 of the rent paid by them during the 12-month period between October 4, 2020 – September 30, 2021, which totals $4,600.00. The Tenant also sought the return of their $575.00 security deposit and recovery of the $100.00 filing fee.

In support of their testimony the Tenant pointed to sections 7, 32, and 28(b) of the *Act*, and submitted and pointed to documentary evidence including but not limited to a written account of the situation and their claims, copies of text messages, correspondence with the Landlord wherein they requested remediation of the mould, photographs of mould in the rental unit, pictures of items damaged by mould and evidence of their value and/or replacement costs, and a monetary order worksheet.

Although the teleconference remained open for the 59-minute duration of the hearing, no one called into the hearing on behalf of the Landlord to provide any testimony for my consideration.

Analysis

Based on the uncontested documentary evidence and affirmed testimony before me from the Tenant, I am satisfied that a tenancy to which the *Act* applies existed between the parties, which ended on September 30, 2021. I am satisfied that a mould issue existed in the rental unit between at least October 4, 2020 – September 30, 2021, if not longer, that the mould issue was not caused or contributed to by the Tenant, and that the Landlord breached sections 32(1) and 28 of the *Act*, when they failed to act diligently with regards to the mould issue and the Tenant's complaints. I am also satisfied that the Tenant acted reasonably to mitigate their loss by repeatedly attempting to have the Landlord deal with the mould issue and by following all reasonable steps to reduce or eliminate mould in the rental unit, including instructions by the Landlord to increase ventilation and clean the mould as it re-appeared. Finally, I am satisfied by the Tenant that they suffered the claimed losses as a result of the Landlord's breaches to the *Act*. Based on the above, I therefore grant the Tenant the $5,689.47 sought for loss of use, loss of quiet enjoyment, cleaning costs, and damaged possessions.

Although I am also satisfied that the Landlord extinguished their right to claim against the Tenant's security deposit for damage to the rental unit, as I am satisfied that they failed to comply with the requirements set out in the *Act* and regulation with regards to move-in and move-out condition inspections and reports, as the Tenant stated at the hearing that they have not yet provided the Landlord with their forwarding address in writing, I therefore dismiss the Tenant's claim for the return of their security deposit with leave to reapply, as I find it premature. Once the Tenant provides the Landlord with their forwarding address, in writing, I order the parties to deal with the security deposit, or any remaining portion of it, as required by the *Act*.

As the Tenant was largely successful in their Application, I also grant them recovery of the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 67 of the *Act*, I therefore grant the Tenant a Monetary Order in the amount of $5,789.47, and I order the Landlord to pay this amount to the Tenant.

Conclusion

The Landlord's Application is dismissed in its entirety without leave to reapply.

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of **$5,789.47**. The Tenant is provided with this Order in the above terms and the Landlord

must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated order, nor my authority to render them, are affected by the fact that this decision and the associated order were issued more than 30 days after the close of the proceedings.

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: August 25, 2022

Residential Tenancy Branch