Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

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

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the "*Act*"):

- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 65 for a rent reduction;
- an order pursuant to s. 32 for repairs;
- an order pursuant to ss. 27 and 62 that the Landlord provide services or facilities required by the tenancy agreement or law;
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement; and
- return of the filing fee pursuant to s. 72.

This matter had been scheduled for hearing on October 6, 2022 but was adjourned to February 13, 2023 as set out in my interim reasons.

K.N. and M.P. appeared as the Tenants. S.M. and A.A. appeared as the Landlords. The Landlords were represented by A.E. as their counsel.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Though my interim reasons mentioned the exclusion of late evidence from the Tenants, I find that this issue is no longer relevant due to the adjournment. The Landlords have acknowledged receipt of the Tenants evidence, including the late evidence, and have had more than sufficient time to review the same over the adjournment period.

Preliminary Issue – Tenants' Claims

The adjournment was granted on the basis that the Tenants had filed for review considerations of another matter, which they argued was relevant to this application. Rather than potentially prejudice the Tenants, I permitted the adjournment to such that the process for the other matter could play itself out.

At the reconvened hearing, I enquired on the status of the Tenants' review application. I was advised by the parties that the review application was dismissed and that the Tenants vacated the rental unit after the Landlord retained a bailiff on October 11, 2022. The Tenants tell me they are filing for judicial review of the other matter, though this seems somewhat moot given they have vacated the rental unit.

As the tenancy is over, I find that the issues raised by the Tenants' claims under ss. 32 (repairs), 27 and 62 (provide services or facilities), and 62 (order that the landlord comply) of the *Act* are no longer relevant. These claims are dismissed without leave to reapply.

The hearing proceeded strictly on the basis of the monetary claims.

Issues to be Decided

1) Are the Tenants entitled to monetary compensation?
2) Are the Tenants entitled to a past rent reduction?
3) Are the Tenants entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. Rule 7.4 of the Rules of Procedure requires parties at the hearing to present the evidence they have submitted. I have reviewed the evidence referred to me and considered the oral submissions made at the hearing. Only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants moved into the rental unit on December 31, 2017.
- The Tenants vacated the rental unit on October 11, 2022.
- Rent of $2,500.00 was due on the first of each month.
- A security deposit of $1,250.00 and a pet damage deposit of $1,000.00 was paid by the Tenants.

I am provided with a copy of the tenancy agreements that were signed and amended by the parties in this matter. The first tenancy agreement signed December 18, 2017 lists rent as $25,000.00 per month, though the parties acknowledge this was a typo and rent was payable in the amount of $2,500.00. The parties initialled an amendment on June 14, 2020 that increased rent to $2,600.00 for the following 12 months.

The tenancy agreement was signed as a fixed term ending on June 30, 2019. I enquired with the Landlords why they made use of the fixed term and was told that this was done at the Tenants' request as they were potentially purchasing a place of their own. The fixed term appears to have been renewed in June 2019 and June 2020.

The Tenants claim $10,000.00 in compensation for their monetary claim and provide the following description of this claim in their application:

> 1. compensation for emotional stress (illegal entry; police being called; tenants seeking medical treatment) 2. reimbursement for illegal rent increase 3. constantly living in fear of fire due to unlicensed workers and insufficient electrical service 4. reimbursement for front door handle 5. reimbursement for smoke/carbon monoxide detectors 6. reimbursement for lawn care & house sitting 7. reimbursement for application fees x 4 (1 granted, 3 pending) 8. reimburse neighbour - landscaping

The Tenants also claim $10,000.00 as a rent reduction and provide the following description of this claim in their application:

> 1. required to purchase freezer 2. required to purchase fridge 3. required to take laundry to laundry service as washer not operating; dryer vent not cleaned (full of lint) and covered with wire mesh ($200/month x 30 months plus wasted energy when running dryer for 6+ cycles for a single load)

The Tenants provide no monetary order worksheet, though in their written submissions the set out the following with respect to their monetary claims:

Laundry service: $70/week x 26 weeks x 3 years	$5,460.00
Front door handle	$132.87
Apartment size freezer	$250.00
Application filing fees x 3	$300.00
Stop payment fees ($25 x 10)	$250.00
Outstanding from illegal rent increase	$2,000.00
Lost food, drain cleaner, reimbursement for registered mail costs	$604.13
Compensation for neglect, intimidation, bullying, mental health	$13,000.00
Total:	$20,000.00

At the hearing, the Tenants advise of having to replace a door handle in February 2020. The Tenants evidence includes a copy of the receipt dated November 2, 2019 for the door handle totalling $132.87. According to the Tenants, prior maintenance issues were dealt with in a similar manner where they would incur the cost and this would be reimbursed by the Landlords later. I am told by the Tenants that did not occur with the door handle. The Tenants indicate they could not make use of the front door due to handle and replaced it. The Landlords argued that the Tenants incurred the cost without first discussing the same with them beforehand.

The Tenants further indicate that the fridge/freezer did not work and that they had to purchase an apartment freezer for their use. The Tenants acknowledge not providing a receipt for this purchase in their evidence. The Tenants acknowledge taking the freezer with them when the tenancy ended.

I am also advised by the Tenants that the laundry machines were not operating properly such that they had to go to a laundromat, though it is unclear the period of time they needed to make use of the laundromat. I am provided with three receipts for a coin laundry dated June 11, 2022, July 2, 2022, and August 18, 2022, totalling $235.00. The Landlords insist that the laundry facilities worked throughout the tenancy, that they worked after the tenants moved out, and that they continue to work for the current tenants and have not required repair.

Further, the Tenants indicate that the Landlords imposed an illegal rent increase from $2,500.00 to $2,600.00. K.N. says that the Landlord S.M. attended the property and refused to leave until the tenancy agreement amendment was signed, which was done

on June 14, 2020. The Tenants were unclear for the period in which the rent increase of $100.00 was in place as they say their papers were stolen when they were evicted from the rental unit. I was told this was for a period of 21 months and then rent reverted back to $2,500.00. The Tenants' written submissions indicate that this period was for 20 months.

The Tenants' evidence includes a letter dated August 4, 2021 sent by the Tenants to the Landlords pertaining to the alleged illegal rent increase. In that letter, the Tenants allege they paid the increased rent for 25 months first paying $2,600.00 on July 1, 2019. In the same letter, there are post-dated rent cheques included, the first of which is dated September 1, 2021 in the amount of $2,500.00. Finally, the August 4, 2021 letter sets out that the Tenants were offsetting the overpayment on rent against utilities owed to the Landlords.

The Landlords acknowledge that rent was increased by $100.00 from July 1, 2020 onwards, but says that this was withdrawn after the Tenants raised issue with it. They indicate that they cannot recall how long the rent increase was in place, but deny it was 21 months. It was further emphasized that during this period the Tenants did not pay their utilities as required under the tenancy agreement.

The Tenants also speak to a level of unresponsiveness from the Landlords with respect to repair issues and allege the Landlords bullied them. The Tenant K.M. alleges that the Landlord S.M. tried to forcibly enter the rental unit in February 2022 and that she filed a police report following the incident. The Tenant K.M. testified to sleeping with a baseball bat next to her bed and had some insomnia.

The Landlord S.M. denied forcing entry into the rental unit as alleged and gave notice to enter but was denied access. I am advised by Landlord's counsel that the Tenants had refused access to the rental unit, which related to the previous hearing in which the notice to end tenancy was upheld. I am provided with a copy of the previous file number by counsel. Counsel further advises that the bailiffs discovered illicit substances in the rental unit, including cocaine and methamphetamine, which may explain why the Tenant had insomnia. The Tenant M.P. insists he has been clean of drug use for some decades.

The parties' evidence makes reference to two separate files concerning this tenancy, the first of which was heard on June 2, 2022 and the second on October 3, 2022. The file numbers are noted on the cover page of this decision.

The Tenants also raise issue with an illegal basement suite, though based on their submissions at the hearing and their written submissions it is unclear how this relates to their monetary claims.

Analysis

The Tenants seek an order for monetary compensation and for a past rent reduction.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the 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.
4. The party who suffered the damage or loss mitigated their damages.

Pursuant to s. 65 of the *Act*, where a landlord is found to have not complied with the *Act*, Regulations, or the tenancy agreement, the director may grant an order that past or future rent be reduced by an amount equivalent to the reduction in the value of the tenancy agreement. Generally, rent reduction claims are advanced when services have been terminated or suspended for repairs.

For both claims under ss. 65 and 67, the applicant bears the onus of proving the claim.

Based on the oral and written submissions of the Tenants, I find that they are collapsing their monetary claims into a general monetary claim. However, the claims under s. 65 and 67 are distinct to one another and have different factors to consider. I make these comments because Rule 2.2 of the Rules of Procedure is clear that a claim is limited to what is stated in the application. This rule exists because it ensures that the hearing proceeds in a procedurally fair manner. Respondents have the right to know the claim against them, which is ensured by applicants setting out their claims in the application and limiting it to those issues raised. Given this, I hold the Tenants to their claims as stated in their application.

Dealing first with the compensation claim under s. 67 of the *Act*, the Tenants made no mention of issues related to unlicensed workers, smoke/carbon monoxide detectors, lawn care and house sitting, and reimbursing the neighbour. Review of the Tenants evidence and written submissions do not add clarity for the basis of any of these claims listed in their application. I find that the Tenants have failed to speak to these issues and prove these aspects of the application. They are dismissed without leave to reapply.

The Tenants allege that they replaced a door handle at the rental unit and that the Landlords did not cover the cost. The basis of claiming this cost would be by arguing the Landlords breached s. 32(1) of the *Act*, which sets out a landlord's obligation to maintain and repair the property. Generally speaking, repairs are undertaken after a tenant makes a request of the landlord, failing which, the tenant may apply for an order to undertake the repairs.

In this instance, I have been provided with no evidence to show that the Landlords were even aware the door handle was broken before it was replaced by the Tenants. It is difficult to show the Landlords were in breach of s. 32(1) of the *Act* when they were not even aware of the issue prior to the cost being incurred. It may be the door could have been repaired without replacement, which may have been cheaper than the choice imposed on them by the Tenants. Again, the general process is to first notify the landlord of the repair issue so that they can address it. The Tenants have imposed a cost of themselves of replacing the door handle without first giving the Landlord an opportunity to address the issue. I find that they have both failed to demonstrate that the Landlords were in breach of s. 32(1) of the *Act* and failed to mitigate their damages as they chose the course of action that maximized their costs. This portion of the claim is dismissed without leave to reapply.

The Tenants also seek compensation for emotional stress. In the written submissions, this amount is listed as $13,000.00. However, I note that this exceeds the $10,000.00 claimed under s. 67 of the *Act* as set out in their application. Though not presented to me by the Tenants in this manner, I take from their submissions that they seek compensation on this basis due to a breach of their right to quiet enjoyment under s. 28 by the Landlords. The problem with this claim is that it lacked any specificity and I was presented with general allegations that were not grounded in the evidence provided. I have little doubt that the parties had a strained landlord-tenant relationship. However, this in and of itself is insufficient to demonstrate breach of the *Act*, tenancy agreement, or regulations that would give rise to a monetary claim.

I am told the Landlord entered the rental unit without the Tenants' authorization. This point is directly disputed by the Landlord. I note that in the previous decision that ended the tenancy, the Tenants were found to have denied access to the rental unit to the Landlords despite their compliance with s. 29 of the *Act*. Another decision referred to me found the Landlord acted unreasonably by attempting to access the rental unit on February 16, 2022, though the decision notes the Landlord did not enter on that occasion and had made notice to enter on that occasion on February 10, 2022. I note that s. 29 of the *Act* does not establish a requirement that a mutually agreeable date for entry be established nor is reasonability relevant except to the extent that the purpose of entry must be reasonable. Though people should agree beforehand as a matter of good practice, the *Act* does not impose that requirement.

I mention this because it is entirely unclear based on the evidence before me that the Landlords have breached either ss. 28 or 29 of the *Act*. As mentioned above, one of the previous decisions show that the Tenants have been found to have denied access to the rental unit despite the Landlord's compliance with s. 29. The other decision notes that the Landlords did not enter the rental unit on February 16, 2022, this despite giving more than 24 hours notice. It appears more likely than not that the Landlords did act in compliance with s. 29 of the *Act* and the Tenants denied the Landlords access to the rental unit despite having done so. I find the Tenants have failed to demonstrate this portion of their claim as the Tenants have failed to show breach of the *Act*, regulations, or tenancy agreement related to emotional stress. It is dismissed without leave to reapply.

The Tenants also seek reimbursement for their application fees in other applications. I note that in the other applications, they also filed for the return of their filing fee under s. 72(1) of the *Act*, which permits the director to order payment of a filing fee by one party to another party. Those decisions dealt with those claims such that they are technically res judicata, which is to say it has already been decided. Further, a claim under s. 72(1) of the *Act* is limited to the application in which it is filed. In this instance, the Tenants claim the filing fee in a manner that results in a double dipping to amounts that were either granted or dismissed. This portion of the claim is improperly sought and is dismissed without leave to reapply.

Dealing with the final aspect monetary claim stated within the application, the Tenants seek reimbursement for an illegal rent increase. I note that the in this matter, the tenancy agreement was a fixed term ending on June 30, 2019, after which point it was

to end and the Tenants move out. The tenancy agreement was renewed on an annual basis moving forward, with the renewal in June 2020 imposing a $100.00 increase in rent for the next 12 months. At the hearing, I was told the fixed term portion of the tenancy agreement was put in place at the Tenants request as they were in the market for a home and would be moving one at the end of the term. Based on this explanation, I find that the fixed term portion of the tenancy agreement was unenforceable as it was not done in compliance of the restrictions set out under s. 13.1 of the Regulation.

Part 3 of the *Act* sets out the process for establishing rent increases. In particular, s. 43(1) of the *Act* sets the amount of rent increase to be imposed and states as follows:

> **43** (1) A landlord may impose a rent increase only up to the amount
> (a) calculated in accordance with the regulations,
> (b) ordered by the director on an application under subsection (3), or
> (c) agreed to by the tenant in writing.

In this instance, there is no doubt that the $100.00 increase exceeded the limit imposed by the Regulations and was imposed at a time when there was a rent freeze due to the COVID-19 Pandemic. It was argued by counsel the parties agreed to the same in writing, such that s. 43(1)(b) of the *Act* was triggered. However, I find that the fixed-term portion of the tenancy agreement was unenforceable as it was not done in compliance with s. 13.1 of the Regulations. It appears more likely than not that the parties undertook an annual renewal of the tenancy agreement despite not having to do so given the unenforceability of the fixed term. It is, in my view, inappropriate for the Landlords to obtain consent to a rent increase when renewing a fixed-term tenancy that was never enforceable to begin with. I find that the Landlords obtained the rent increase in breach of s. 43(1) of the *Act*.

Thought I accept the rent increase was improper, I am left at a loss at how to quantify the claim. At the hearing, the Tenants say they paid the increased amount for 21 months. In their written submissions, the Tenants say it was 20 months. The Tenants evidence includes copies of rent cheques, the earlies of which is dated September 1, 2021, in the amount of $2,500.00, meaning that $2,600.00 amount was paid from July 1, 2020 to August 31, 2021. However, the August 4, 2021 letter, which accompanied the rent cheques, the Tenants claim they paid the increased amount for 25 months starting in July 1, 2019 until August 1, 2021. I note that the amendment for the rent increase was signed in June 2020. Though the Landlord acknowledges receiving the increased amount, they tell me it was for much less than 21 months. Finally, the Tenants' letter of

August 4, 2021 suggests that the Tenants deducted the overpayment from utilities owed to the Landlords, which would arguably be permitted under s. 43(5) of the *Act*, such that I do not know if there is any balance at all for the overpayment, whatever it may have been.

All this is to say that this is the Tenants' claim. They bear the burden of proving it, including quantifying it. Surely they could have provided some documentary evidence, such as banking records, to demonstrate the period they paid the increased amount. I have been provided with no such records or an accounting with respect to whatever offset they exercised pursuant to s. 43(5) of the *Act*. I find that the Tenants have failed to property quantify their claim. This portion is also dismissed without leave to reapply.

The Tenants also seek an order for a rent reduction. Firstly, they seek compensation for the purchase of freezer. Strictly speaking, this is probably better suited as a claim under s. 67 of the *Act*. However, the Tenants retained the freezer such that they would have no basis for the claim in any event. In any event, I have not been provided with any evidence to support either a finding that the freezer to be provided by the Landlords was not working and, if it was, the period in which it was not. Similarly, the Tenants claim they replaced a fridge in their application. I have been provided no evidence on this point at the hearing nor is it clear the period the fridge was in issue, if at all. I find that the Tenants have failed to demonstrate this portion of their claim. It is dismissed without leave to reapply.

The Tenants seek a rent reduction or compensation for laundry services as their washer and dryer was not operating. As stated in the application, this was estimated to be $200.00 per month for 30 months plus wasted energy. The written submissions, however, characterize this as $70.00 per week for 26 weeks over three years. I am provided with three laundromat receipts dated between June and August 2022 in varying amounts. Again, I hold the Tenants to the claim listed in their application. They claimed this portion as a rent reduction.

Firstly, the Tenants have failed to first establish that the laundry facilities were in issue. Receipts from a laundromat are insufficient to establish the machines were not working. There is nothing to suggest that the laundry was not working, though some of the correspondence from the Tenants to the Landlords suggest it was it was working inefficiently and asked that the Landlords replace them. However, the Landlords directly contradict this by telling me that the laundry machines were in working order and continue to work for the current tenant. Given these issues, I am unable to make a

finding that the laundry machines were not working. As such and as this is the Tenants claim, I find that the Tenants have failed to first establish that the laundry facilities were not working justifying a past rent reduction claim. This portion of their claim is also dismissed without leave to reapply.

I find that the Tenants have failed to meet the burden of proving any of their claims. Their application is dismissed without leave to reapply in its entirety.

Conclusion

The Tenants claims under ss. 32, 27 and 62, and 62 of the *Act* are dismissed without leave to reapply as the tenancy is over.

The Tenants' claims under s. 67 of the *Act* for monetary compensation is dismissed without leave to reapply as the Tenants failed to prove their claims.

The Tenants' claims under s. 65 of the *Act* for a rent reduction is dismissed without leave to reapply as the Tenants failed to prove their claims.

The Tenants were unsuccessful in their application. I find they are not entitled to their filing fee. Their claim under s. 72 of the *Act* 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: February 17, 2023

Residential Tenancy Branch