Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRT, MNDCT, RR, PSF, LRE, LAT, RPP, OLC, FFT

Introduction

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

- a monetary order for reimbursement of the cost of emergency repairs;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order requiring the landlords to return the tenants' personal property pursuant to section 65;
- an order to the landlords to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70;
- an order to allow the tenants to change the locks to the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act.*

NS appeared for the tenants in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

At the outset of the hearing, the landlord confirmed that their legal name was different than the name noted on the tenants' application, and that all the tenancy documents are in the landlord's legal name. In the absence of identification to confirm the landlord's legal name, the style of cause for this application was amended to include the name that the landlord testified was their legal name.

The landlords confirmed receipt of the tenants' application, which was sent by way of registered mail. In accordance with section 89 of the *Act*, I find the landlords duly served with the tenants' application. The landlords denied being served with the tenants' evidentiary materials, but during the hearing, the landlords confirmed receipt of the documentation that was submitted for this hearing. I am satisfied that the landlords were served with the tenants' evidence at a later date, and it would not prejudice the landlords to admit these materials, and continue with the scheduled hearing. The landlords submitted their evidentiary package, which they testified was served on the tenants on February 22, 2023 by way of posting the package on their door. The tenant testified that they could not recall whether they had received this package. In review of this package, the documents appear to be identical to the documents previously submitted for a previous hearing held on March 13, 2023. In that decision, the Arbitrator was satisfied that these documents were sufficiently served on the tenants. Based on the evidence before me, I am satisfied that the tenants were served with the landlords' evidence package, and the hearing proceeded.

Issues

Are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to reimbursement for the cost of emergency repairs?

Are the tenants entitled to an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Should the tenants be given authorization to change the locks to the rental unit?

Are the tenants entitled an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order to the landlords to provide services or facilities required by law?

Are the tenants entitled to an order for the landlords to return their personal property?

Are the tenants entitled to recover the cost of the filing fee from the landlords for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on September 15, 2022, with rent set at $2,700.00 per month. While the tenancy agreement states that rent is payable on the 15th day of each month, as confirmed by the landlords. The tenant testified that rent was payable every two weeks. The landlords hold a security deposit of $1,350.00 for this tenancy.

The tenants filed this application requesting several orders.

The tenants are requesting reimbursement of emergency repairs paid for, or performed, by the tenants. The tenants submitted an invoice dated January 27, 2023 from a duct and furnace cleaning company in the amount of $465.00. The description of the services rendered include cleaning of the HVAC system, including furnace and furnace components, supply and return air ducts, AC unit cleaning, and full sanitization of all the ventilation systems in the home.

The tenant testified that their mother had lung cancer, which they attributed to issues with the home. The tenant testified that their doctor had suggested that furnace cleaning be performed. The tenant testified that they had discovered that the air conditioning coils were rusted. The tenant testified that they had informed the landlords of the issue, and how freon was blowing throughout the entire house, but the landlords failed to address the issue.

The tenants did not submit a monetary order worksheet, but are requesting reimbursement of the repairs that they have completed for the landlords at another property owned by the landlords, in addition to the work at the rental address

The tenants submitted an invoice dated January 31, 2023 for work they had performed themselves in the amount of $3,300.00 plus tax for unfreezing pipes at both the rental address, and other home, as well as other invoices for work completed by the tenants' company.

The tenants testified that the landlords did not want a written contract as they did not want the strata to know about the work performed. The tenants testified that both parties had entered into agreement that they could perform repairs at the landlords' other property, and the landlords would deduct the cost of the work from the tenants' rent and utilities owed. The tenants testified that the agreement would be that the landlords would pay the tenants any amount that exceeded the amount owed for rent and utilities. The tenants testified that the conversations took place in person and over a messaging application.

The tenants testified that they had started the work, which involved converting a garage to living space, and were only able to complete about half to three quarters of the work as the landlord had locked the tenants out of the property and threw the tenants' tools outside.

The tenants submitted invoices for the work completed, and testified that the landlords have not compensated the tenants for any of the work. The tenants testified that the last rent payment they had made was on or about November 20, 2022, and that they have withheld further payments because of the money owed. The tenants believe that the landlords owe them a total of $37,979.85 for the work completed less the $21,700.00 for rent and utilities owed until June 15, 2023. The tenants calculated that the remaining amount that remains unpaid should be $16,279.85.

The tenant testified that they have been denied access back to the jobsite, and believe that the landlords have thrown out their tools. The tenants submitted messages from the landlord stating that their "tools will be outside tomorrow". The tenants are also concerned about the landlords' threats to cancel their utility services. The tenants submitted a copy of a message from the landlord stating that they "will start disconnecting utilities starting with telus next week, I will tick them off one by one". The tenant testified that the landlord already cancelled the tv and internet, and they have received notification that the electricity will be cancelled shortly. The tenants expressed concern about the landlords' threatening behaviour, and requested further orders to restrict the landlords' access to the home, authorization to change the locks, and for the landlords to stop harassing and bullying them.

The landlords do not deny that they had a verbal agreement with the tenants to perform work at their other property. The landlords testified that they had agreed to supply the

materials, and as the tenants were arrears in their rent and utilities payments, the landlords would allow the tenants to perform the work which would go towards payment of the outstanding rent and utilities.

The landlords testified that the tenants had started the job in December 2022, and was to complete the project by January 31, 2023. The landlords testified that they had only completed 10% of the work by the end of January, and the work completed was not done properly. The landlords stated that they had attended on January 31, 2023 and discovered that the renovations were not complete, and that the tenants had allowed unauthorized parties to occupy the property without the landlords' knowledge. The landlord testified that they found drugs and drug paraphernalia. The landlords testified that they discovered many missing items, and decided to restrict the tenants' access to the work site as of February 1, 2023. The landlords expressed concern that the tenants have not paid any of the outstanding rent or utilities, and argued that the work performed was worth around $3,000.00 or $4,000.00 only.

The landlords submitted a deficiency report dated February 11, 2023 from a contractor after an inspection was performed at the work site. The report noted several deficiencies including the following:

"The internal staircase was found to be inadequate, unsafe, and completely unusable. Repairs include removing and disregarding all existing framing"

"All new wall framing failed to meet industry standards and BC building code. Repairs included repairing/replacing top plates. Securing and correcting bottom plates. Plumb and level all framing. Adding additional studs/framing and corners where required. Adding drywall backing. Reframe/complete close and stairwell. Correct door framing. Uninstall and reinstall all doors. The pony wall needed to be removed and reframed level".

"The kitchen pantry is installed incorrectly, trim and molding installation do not meet AWMAC standards. Work requires removal of the cabinet, repairs to the cabinet, and replacement for all trims and hardware, and reinstallation of cabinet and trim".

The landlords also dispute the other monetary claims by the tenants for emergency repairs. The landlords argued that the home was regularly maintained, and submitted an invoice for furnace and duct cleaning on September 10, 2022, just before the beginning of this tenancy.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenants must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

> ***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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claims on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

The tenants requested reimbursement of what they considered to be emergency repairs for this tenancy.
Section 33 of the *Act* states the following in regards to emergency repairs:

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…

(v) the electrical systems….

(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…

(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)…

> (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.

Under Section 33 (1)(c) of the *Act,* frozen pipes and damage to the primary heating system may be considered emergency repairs. I am not satisfied, however, that the tenants have provided sufficient proof to show that they had followed the required steps outlined in section 33(3) of the *Act*. Accordingly, I find that the tenants are not entitled to reimbursement of the amounts claimed for emergency repairs, nor are they entitled to deduct from their rent these amounts. I will now consider the remainder of the tenants' monetary claims.

Section 26(1) of the *Act* requires the tenant to pay rent when due under the tenancy agreement, "whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent". In this case, it is undisputed that the landlords and tenants had entered into a verbal agreement for the tenants to perform work for the landlords, and the cost of the work would go towards payments of the rent and utilities owed for this tenancy.

In review of the testimony and evidence before me, although the tenants submitted multiple invoices of work they purported to have performed for the landlords, I find that other than the work the landlords confirmed was completed, I am not satisfied that the tenants had provided sufficient evidence to support the amounts claimed above the value of the work the landlords had confirmed for this dispute. The tenants did not submit in evidence for this hearing any photographic proof of the work completed. Furthermore, in review of the invoices submitted, the majority are undated, with the exception of the invoices dated January 31, 2023. In the absence of a written contract between the parties, I am unable to determine what actual work the landlords had agreed to compensate the tenants for. Although the landlords did acknowledge that the tenants did start work at the property, I find that the tenants failed to establish the actual value of the work performed, and what amount of compensation or deduction from rent would be allowed for the work performed. As noted above, the burden of proof falls on the applicants to support their claims, including the actual value owed.

I find that the tenants did perform some work at the property, which they should receive reimbursement for. As the landlord had estimated that less than 10% of the discussed work was completed, and as the landlord had estimated the value of the work to be between $3,000.00 to $4,000.00, I will apply this calculation for the value of the work

performed. 10% of the $37,979.85 (the amount submitted by the tenants for the work they had completed) is $3,797.98. I find that this amount falls within the $3,000-$4,000.00 estimation provided by the landlords. I am not satisfied that the tenants have established their claim above this amount. Accordingly, I order that the tenants be allowed to apply $3,797.98 towards the outstanding rent owed for this tenancy. The remainder of their monetary claim is dismissed without leave to reapply.

The tenants also applied for the return of their personal property, specifically the tools from the job site. I note that section 65 of the *Act* only pertains to personal property that is seized by the landlord contrary to the Act or tenancy agreement. Although the relationship of the two parties is a tenant and landlord relationship, the tools were not removed from the rental property, and pertain to a job site that was not part of the tenancy agreement, I find that I do not have jurisdiction to make any orders related to the matter of the missing tools. Accordingly, I decline to make any orders related to the missing tools.

In relation to the threats of the landlord to disconnect the utilities at the rental unit, I note that the cablevision, electricity, and internet are not noted as included in the monthly rent as per the written tenancy agreement. As such, the tenants are at liberty to obtain and pay for these services directly themselves from the service providers. I dismiss the tenants' application for the landlord to provide these services without leave to reapply.

I am not satisfied that the landlords have attempted to restrict the tenants' access to the home located at the rental address. Accordingly, I do not find it necessary that any further orders are required at this time. The tenants' application for any orders restricting, or to set conditions on, the landlords' right to enter the rental unit, and to change the locks, is dismissed without leave to reapply.

As the tenants' application did contain some merit, I allow the tenants to recover the filing fee.

Conclusion

I find that I do not have jurisdiction to make any orders related to the return of the tenants' tools removed from the job site.

I order that the tenants be allowed to apply $3,797.98 plus the $100.00 paid for this application towards the outstanding rent owed for this tenancy.

The remainder of the tenants' 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 02, 2023

Residential Tenancy Branch