DECISION

Introduction

The parties have each filed an application under the *Residential Tenancy Act* ("Act") claiming compensation against the other.

The landlord filed his application on March 5, 2023, and the tenant filed her application on September 26, 2023. Both applications were heard before me on November 16, 2023. The parties attended the hearing on their own behalf, were affirmed before providing any substantive testimony, and they confirmed service of evidence.

The Issues

I am asked to determine the following two issues:

1) Is the landlord entitled to compensation?
2) Is the tenant entitled to compensation?

Evidence and Analysis

In an application under the Act, an applicant must prove their claim on a balance of probabilities. Stated another way, the evidence must show that the events in support of the claim were more likely than not to have occurred. I have reviewed and considered both the party's oral evidence (that is, their testimony) and the large volume of documentary evidence, but I will only refer to that which is relevant to this decision.

The tenancy began January 1, 2022, and ended April 16, 2023. Rent was $2,100, and the security deposit was $1,050.0 A copy of the tenancy agreement was in evidence.

Landlord's Claim for Compensation

The landlord seeks $5,064.75 in compensation all stemming from, as he confirmed during testimony, the tenant's abuse of the Residential Tenancy Branch's processes and procedures. There was a notice to end tenancy that the landlord issued in December 2022. The tenant filed an application for dispute resolution under the Act to dispute the notice to end tenancy, and the matter went to an arbitration hearing on May 5, 2023. However, the tenant ended up vacating the rental unit on April 16, before the hearing.

Section 7(1) of the Act establishes that a party may only seek compensation when a landlord or tenant does not comply with the Act, the regulations, or their tenancy agreement. In other words, a tenant or landlord must breach some section or subsection of the Act for a claim to arise. Once a breach is proven, then an arbitrator may consider additional factors, such as whether the aggrieved party mitigated their loss, whether the dollar amount of the loss or damages has been proven, and whether the party would not have suffered a loss but for the negligent party's actions.

Regarding the landlord's claim, while the tenant may very well have intended to "hold up the process" by disputing the notice to end the tenancy, a tenant's *intentions*, or *reasons* for disputing a notice to end the tenancy are irrelevant, scheming as they may be.

Nowhere in the Act is there a requirement that a tenant who disputes a notice must do for a particular reason. Oftentimes, a tenant may dispute a notice to end a tenancy because they honestly believe that the landlord issued the notice in error. Other times, a tenant may dispute a notice because they have been unable to resolve an underlying issue with their landlord. And, in some cases, a tenant may very well dispute a notice simply to "buy time," as it were.

Regardless, a tenant's reason for disputing a notice to end the tenancy is not a factor or a requirement under the Act that must be proven or established by either party. If a landlord issues a notice to end a tenancy (sections 46 through 49, inclusive), a tenant may dispute that notice to end the tenancy.

As a brief aside, I do note that section 62(4)(c) of the Act states that the Residential Tenancy Branch may "dismiss all or part of an application for dispute resolution if [. . .] the application or part is frivolous or an abuse of the dispute resolution process."

However, a finding of whether an applicant's application for dispute resolution is frivolous or an abuse of the process is determined during the application stage. In other words, it was the previous arbitrator's decision (in this case, a decision rendered on May 5, 2023) which would have to determine whether the tenant's application to dispute the notice was frivolous or an abuse of the process. There was no such finding and I am thus not able to make findings of fact or law in respect of that previous decision.

For this reason, but primarily on the basis that I can find no breach of the Act, the regulations, or the tenancy agreement for which the landlord seeks compensation, it is my respectful finding that the landlord has not met the onus of proving his claim. The landlord's application is dismissed, without leave to reapply.

Tenant's Claim for Compensation

The tenant seeks compensation for (1) a well water test, (2) loss of a service or facility, namely, potable water, and (3) various loss of peace and quiet enjoyment issues.

In respect of the well water test, the tenant testified that she had the well water tested after she and her young son developed skin rashes in early March 2023. The tenant's claims stem from the cost of the test and from the tenant's purported loss of useable water for March and April 2023.

What is markedly absent from the tenant's case, however, is a complete copy of the lab report. There is a document, or rather, a screenshot, of a "Certificate of Analysis" referencing a pH figure. However, there is nothing more than this briefest of documents. There is no additional information on who or how the test was conducted. The only related document to this testing is a hand scrawled note wherein the author writes, "I Matthew [last name redacted] confirm that this analysis was done to the information given in the analysis instructions by [tenant's name]. on the date of Mar 23, 2023."

This is, with respect to whomever this Matthew might be, sorely lacking in context or detail. In short, there is almost no evidentiary weight to the tenant's evidence as presented supporting a finding that the well water was (1) required to be tested in the first place, and (2) the source of the skin rashes, and (3) responsible for the tenant having to haul 50 lb water jugs up to the property.

In her letter dated March 31, 2023, the tenant explains to the landlord that "the entire analysis [of the lab results] will be released to you upon payment of this bill." This statement was repeated during the tenant's testimony and submissions.

With respect, I am unable to find that the landlord is somehow responsible for the alleged lack of potable water when the tenant refuses to disclose material information—that is, a copy of the full lab report—which would be the proof needed that there was, in fact, something wrong with the well water.

The doctor's observations pertain to the tenant's skin condition, but the doctor was not privy to the water testing, and his comments about the well water are outside his area of expertise. This is not to say that the doctor cannot provide a possible cause of a skin rash, but I place little weight on the doctor's note as evidence that there was something amiss with the well water.

Last, while both parties frequently mentioned a health officer's comments or opinions from Interior Health, I see no definitive documentary evidence before me which, again, might lead me to conclude that the landlord was responsible for whatever the cause of the tenant's skin rash.

Taking into consideration all the relevant oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving that the landlord breached the Act. To be clear, this does not mean that *something* was not going on with the well water. However, without something more, I simply cannot find that the landlord was responsible for what might have been causing the skin rashes. Therefore, this aspect of the tenant's application—the claim for both the cost of the water test and for the two month's loss of potable water—must be respectfully dismissed, without leave to reapply.

The particulars of the tenant's application for the second amount claimed ($2,520.00) are as follows:

> I'm requesting a 10% refund on rent paid from May 2022-April 2023 ($210/month). I had asked by text and verbally for the landlord to stop entering my home without notice in May and he would enter 2-3 per week through Sept 2022 without knocking or giving notice. He was provided a cease and desist letter in Oct. Oct-Feb 2023 I received multiple threatening text messages. He then forced me to live with someone I asked to leave and entered the home illegally from Feb-April.

Regarding this claim, I have read every single line of every text conversation screenshot that the tenant submitted into evidence. And, I am unable to find any threats embedded, explicit or implied, within the conversations. What I do read is two parties who are at clear loggerheads about ongoing issues, and what is apparent is an ever-increasingly frustrated landlord. However, the tenant's claims about threats are simply not grounded in the evidence.

Nor am I satisfied on the evidence that the landlord “forced” the tenant to live with someone else. And, while the landlord admitted not having provided written notice to enter the rental unit, the tenant did not appear to have any problem with the landlord’s stated intentions at the start of the tenancy that he would be entering briefly to turn on a breaker switch for his irrigation. Certainly, the landlord may have breached the Act by entering the rental unit without proper notice requirements, the tenant has not proven a direct or indirect loss of quiet enjoyment from those brief entries.

Taking into careful consideration all the evidence presented before me, and after applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving that the landlord breached section 28 of the Act, namely, a loss of quiet enjoyment. Thus, I must respectfully dismiss the tenant’s application, without leave to reapply.

Conclusion

Both parties’ applications are dismissed, without leave to reapply.

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

Dated: November 18, 2023

Residential Tenancy Branch