



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF, AAT, LAT

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- authorization to change the locks to the rental unit pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord testified that she posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on December 17, 2012. The tenant testified that a copy of his dispute resolution hearing package was placed in the landlord's mailbox on or about January 20, 2013. The landlord confirmed that she received a copy of the tenant's hearing package. The landlord testified that she sent a copy of her dispute resolution hearing package to the tenant by registered mail on January 25, 2013. She provided the Canada Post Tracking Number to confirm this registered mailing. As the tenant was not home when this package was delivered, she said that she signed for it on his behalf and left it in his mailbox near the entrance to his suite. Although this method of receiving the tenant's registered mail does not satisfy the requirements of the *Act*, the landlord also testified that she placed another copy of her hearing package in the tenant's mailbox, including her evidence package, on January 28, 2013. The tenant confirmed that he received the landlord's hearing and evidence packages. I am satisfied that both parties received the hearing packages from one another in time to prepare for this hearing.

At the commencement of this hearing, the parties agreed that an Arbitrator appointed under the *Act* made a final and binding decision with respect to the landlord's application to end this tenancy and obtain a monetary award on January 24, 2013. The parties agreed that the Arbitrator issued an Order of Possession to the landlord to take effect on February 13, 2013, by which time this tenancy will have ended. The tenant advised that he plans to abide by the Arbitrator's Order of Possession and vacate the premises by that date. The Arbitrator also authorized the landlord to retain \$293.87 from the tenant's \$450.00 security deposit.

The tenant applied for dispute resolution 14 days before the Arbitrator heard the landlord's previous application for dispute resolution. As such and as this tenancy is ending shortly, the tenant withdrew his application for dispute resolution. The tenant's application is withdrawn.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover her filing fee for this application from the tenant?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on October 14, 2011. At the expiration of the initial term, the tenancy converted to a periodic tenancy. Monthly rent is currently \$900.00, payable in advance on the 14th of each month, plus 20% of the BC Hydro costs for this rental property. Although the tenant paid a \$450.00 security deposit on October 13, 2011, as a result of the Arbitrator's January 24, 2013 decision, the current value of this deposit held by the landlord is \$206.13.

The landlord's application for a monetary award of \$3,530.00 included:

- a claim for a monetary award of \$3,360.00 for 42 hours of her time devoted to dealing with the tenant at an estimated hourly rate of \$80.00 per hour; and
- a claim for a monetary award of \$120.00 to reimburse her for 6 hours of her time in driving to the Residential Tenancy Branch (RTB) twice at an estimated hourly rate of 20.00 per hour.

Much of the landlord's written evidence addressed the tenant's request for a monetary award, an application that is not before me. She also provided copies of documents associated with a dispute over the payment of utility charges, an issue that was considered by the previous Arbitrator on January 24, 2013. Much of the remainder of the landlord's oral, written and photographic evidence was apparently submitted to

demonstrate the emotional stress the landlord had sustained as a result of dealing with the tenant's ongoing demands and requests.

The landlord maintained that she was entitled to a monetary award for "stress, pain, suffering and abuse" resulting from the tenant's actions. She testified that she was under significant mental and emotional stress and that the tenant had been uncivil to her and had behaved in a threatening way on an ongoing basis. She provided no evidence from a health care professional to support her application, although she said that she could obtain such evidence if necessary. She called her father as a witness. However, his only evidence was that he witnessed the letters that his daughter had filled out to prepare for this hearing. He expressed uncertainty as to why his daughter had called him as a witness.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Although I have given the landlord's oral, written and photographic evidence careful consideration, I find that she has not provided evidence that demonstrates her entitlement to any form of a monetary award. I find that much of her application appeared to be intended as a counter-claim to a monetary award that was not before me. I also find that much of her claim is an attempt to obtain a monetary award for her attendance to duties that fall under her responsibilities as a landlord. While I recognize that this tenancy has not worked out for either party, the party seeking a monetary award bears the burden of demonstrating that she is entitled to a monetary award. I find that the landlord's claim falls far short of demonstrating any entitlement to a monetary award for the items claimed. For this reason, I dismiss the landlord's claim for a monetary award for losses arising out of this tenancy without leave to reapply.

As this tenancy has yet to end and no joint move-out condition inspection has been conducted, I find that the landlord's application to retain the tenant's security deposit is premature. Once the tenancy has ended, both parties are subject to the provisions of the *Act* with respect to the tenant's security deposit (primarily section 38).

Since the landlord has been unsuccessful in her application, I dismiss her claim to recover her filing fee from the tenant without leave to reapply.

Conclusion

I dismiss the landlord's application for a monetary award for losses arising out of this tenancy and for the recovery of her filing fee without leave to reapply.

I allow either party to apply for authorization to access the remaining portion of the tenant's security deposit at the end of this tenancy.

The tenant's application is withdrawn.

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 12, 2013

Residential Tenancy Branch

