



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 105 minutes. The two tenants, KP ("tenant") and "tenant MA" and their English language interpreter (collectively "tenants") attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenants called two witnesses, "witness SE" and "witness FF" to present sworn testimony on their behalf at this hearing. The tenants had a full opportunity to question both witnesses.

The tenant testified that the landlord was served with the tenants' application for dispute resolution hearing package ("Application") on February 2, 2015, by way of registered mail. The tenants provided original Canada Post receipts and a tracking number, to confirm this service. The tenants stated that they served the landlord with the Application at the rental unit address, which was the only address for service provided by the landlord on the tenancy agreement and during this entire tenancy. The tenants indicated that they had previously served the landlord with other tenancy-related documents at the rental unit address and the landlord received all of these documents. The tenants stated that they were aware that the landlord's daughter was residing in the rental unit at the time they mailed their Application, as she was also residing there during their tenancy. Section 89(1)(c) of the *Act* states that an application may be served "by sending a copy by registered mail...if the person is a landlord, to the address at which the person carries on business as a landlord." I find that the landlord's address

for service in the tenancy agreement, which was the rental unit address, was the place where the landlord carried on business. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' Application on February 7, 2015, five days after its registered mailing.

Issues to be Decided

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

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant testified that two different tenancies were entered into with this landlord. The first tenancy was a "residential tenancy" for a fixed term of one year, beginning on May 1, 2014. The tenants vacated the rental unit on October 10, 2014. Monthly rent in the amount of \$1,700.00 was payable on the 30th day of each month. A security deposit of \$850.00 was paid by the tenants. The tenants provided a copy of the tenancy agreement for this residential tenancy after the hearing, at my request, as a copy was not provided with the tenants' Application. The tenants occupied one unit in a two-unit house for this residential tenancy.

The tenant testified that the second tenancy was a "commercial tenancy" for the purpose of operating a daycare. This tenancy began on May 1, 2014 for a fixed term of one year. Monthly rent of \$1,300.00 was payable. A security deposit of \$650.00 was paid by the tenants. The tenants provided a copy of this written tenancy agreement after the hearing, at my request, as a copy was not provided with the tenants' Application. This tenancy agreement is a separate document from the residential tenancy agreement. The tenants occupied the second unit in the two-unit house for this commercial tenancy.

The tenants seek a return of both security deposits paid to the landlord for the residential and commercial tenancies, totalling \$1,500.00. The tenants testified that a "previous hearing" was held on November 19, 2014, whereby a "previous decision" of the same date was issued by a different arbitrator. The file number for this previous hearing appears on the front page of this decision. The previous decision granted a monetary order to the landlord applicant in the amount of \$2,850.00, which included \$4,300.00 for unpaid rent and \$50.00 for the filing fee for the application, offset by the security deposit of \$1,500.00. The previous decision established that rent of \$3,000.00

was due each month and a security deposit of \$1,500.00 was paid by the tenants to the landlord. The tenants did not attend the previous hearing and they applied for a review of the previous decision, which was dismissed by another arbitrator by way of a "review decision," dated December 22, 2014, the file number of which also appears on the front page of this decision. The tenants confirmed that the landlord has not served them with any monetary order from this previous hearing and they have not paid any amounts to the landlord towards this order.

The tenants also seek a return of their rent of \$5,200.00 total for four months from May to August 2014, under the commercial tenancy. The tenants indicated that they did not pay rent of \$1,300.00 for each of September and October 2014 for the commercial tenancy. They stated that the landlord prevented them from operating their daycare business, which they spent time and money organizing. The tenants indicated that the landlord did not advise them about two other tenants, a mother and her son, residing in the same rental unit. The tenants explained that because they did not declare these two other tenants in the rental unit, they were denied a license to operate their daycare business. The tenants stated that the landlord had only advised them that the landlord's daughter would be sleeping in one room of one unit in the house and that no other tenants would be residing there. The tenants were told about two other tenants by the police when they attended at the rental unit because one of the other tenants had a criminal record. The tenants also maintained that the criminal record was also a factor in the refusal of their license. The tenants stated that the two other tenants were residing in a hidden area behind the landlord's daughter's room. They indicated that this area had a bedroom, kitchen and bathroom, which was not declared to them by the landlord and they had not seen it previously. The tenants indicated that after discussions with the landlord, the landlord advised that she would evict the other two tenants after two months but failed to do so. The tenants maintained that they suffered business losses because they were unable to operate their daycare without the required license. They indicated that they already had clients in place and that they had set up the daycare after buying the required supplies.

Witness SE and witness FF both testified that their children were previous clients of tenant MA and that they are aware of the costs, estimated at \$5,000.00 by witness SE, as well as the time and effort expended by the tenants to set up their daycare business at the rental unit. The witnesses also stated that they were aware that the tenants were refused a daycare license because the tenants did not declare the other two tenants residing in the rental unit. The witness indicated that the landlord did not tell the tenants about the other two tenants and that the police were attending at the rental unit frequently because of these other two tenants.

The tenants testified that they are entitled to hydro/electricity costs that they paid on behalf of the landlord at the rental unit. They stated that they are required to pay 4/5 of the costs, while the landlord is required to pay the remaining 1/5. However, the addendum to the tenancy agreement, provided by the tenants with their tenancy agreement, states that the tenants are responsible for 2/5 of the costs. The tenants indicated that they had copies of the hydro/electricity bills in front of them during the hearing but they did not realize that they were required to submit this evidence for the hearing. They stated that the bill for July 21, 2014 was in the amount of \$189.71 and the bill for September 19, 2014 was in the amount of \$109.66, totaling \$299.37. The tenants seek 1/5 of these two bills, equaling \$59.87.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the two tenants and their two witnesses, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings around each are set out below.

Security Deposit

The tenants seek a return of their two security deposits paid for both the residential and commercial tenancies, totalling \$1,500.00. In the previous hearing, the Arbitrator awarded a monetary order to the landlord and offset the award with the \$1,500.00 security deposits. The tenants applied for a review of this decision and the Arbitrator for the review consideration decision upheld the decision of the previous Arbitrator at the previous hearing. Therefore, I find that the tenants' Application for a return of their security deposit is *res judicata*, meaning the matter has already been conclusively decided by another Arbitrator appointed under the *Act* and it cannot be decided again. I advised the tenants about this during the hearing. Accordingly, the tenants' Application for return of their security deposit is dismissed without leave to reapply.

Rent compensation for failure of daycare business

Section 4(d) of the *Act*, outlines a tenancy in which the *Act* does not apply:

4 This Act does not apply to

- (d) living accommodation included with premises that*
 - (i) are primarily occupied for business purposes, and*
 - (ii) are rented under a single agreement.*

The tenants rented one unit of a two-unit house for business purposes in order to operate a daycare. This commercial tenancy was made under a single commercial tenancy agreement whereby a separate monthly rent and security deposit were paid to the landlord. Accordingly, I find that I am without jurisdiction to consider the tenants' Application for a monetary award for rent compensation of \$5,200.00, as the *Act* does not apply to this commercial tenancy because it is excluded by section 4(d) of the *Act*. Therefore, I cannot make any award with respect to this portion of the tenants' Application.

The tenants are at liberty to make a claim in the Courts to recover any monetary loss they incurred as a result of their commercial tenancy.

Hydro/Electricity costs

The tenants claim for \$59.87 for hydro/electricity costs from the landlord, which they say represents 1/5 of the bills from July to September 2014. The tenants did not provide any bills to support their claim, despite the fact that these bills were in their possession at the time of this hearing. While I do not disbelieve the tenants' testimony regarding the costs that they paid on behalf of the landlord, oral evidence provided in the place of available documentary evidence is given less weight as it is inherently less reliable. This is especially the case where documentary evidence is available that could easily substantiate the tenants' case: the best evidence available should be provided.

On a balance of probabilities and for the reasons stated above, I find that the tenants have failed to provide sufficient evidence that they are entitled to utility costs from the landlord. Accordingly, I dismiss the tenants' Application for a monetary order in the amount of \$59.87 for hydro/electricity costs.

Filing Fee

As the tenants were unsuccessful in their Application, they are not entitled to recover the \$50.00 filing fee from the landlord.

Conclusion

I find that the tenants' Application for a return of their security deposit is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again. I find that the November 19, 2014 decision of another arbitrator constitutes a bar

to the tenants' claim for return of their security deposit, which has already been applied to a previous monetary order given to the landlord. Accordingly, the tenants' application for return of their security deposit is dismissed without leave to reapply.

I decline to hear the tenants' Application for a monetary award of \$5,200.00 for rent compensation for failure of their daycare business in their commercial tenancy. I have no jurisdiction to consider this portion of their Application.

The tenants' Application for a monetary award for hydro/electricity costs and for recovery of the filing fee for this 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: May 19, 2015

Residential Tenancy Branch