



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, RR, O, FF

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- another order or remedy under the Act; and
- authorization to recover the 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, and to make submissions. I accept the testimony of both parties acknowledging service of the other party's materials for hearing, including the tenant's Application for Dispute Resolution and 30 pages of evidence.

Preliminary Issue: Previous Hearing Decision

On March 3, 2015, the landlords and tenant attended a teleconference hearing with respect to the landlord's application for a monetary award for damage/loss and to retain the tenant's security and pet damage deposit as well as to recover the filing fee for that application. As a result of that hearing, the original Arbitrator found:

1. the landlord was entitled to \$25.00 for the cost of repairing a lawnmower;
2. the landlord was entitled to \$173.24 for carpet cleaning;
3. the landlord was entitled to \$178.50 for the cost to replace the lawn;
4. the landlord was entitled to recover the \$50.00 filing fee

In the original decision, the Arbitrator addressed the tenant's security and pet damage deposits finding that the amount (\$426.74) owed to the landlord should be deducted from the total of the two deposits (\$850.00). The original Arbitrator's March 9, 2015 decision issued a monetary order to the tenant in the amount of \$423.26.

As a preliminary matter, the original Arbitrator indicated that,

The Tenant testified that she had filed a counterclaim to the Landlord's Application. The tenant's counterclaim was filed too late to be added to today's hearing and has been given a date for hearing in May, 2015. ... I explained to the parties that I would be making a decision with respect to the Landlord's application only and that the Tenant's Application would be considered on the May hearing date.

While I am obliged to consider the tenant's application with respect to a monetary order for compensation for damage or loss as well as her application to retroactively reduce her rent for services or facilities agreed upon but not provided, I dismiss the tenant's application for return of all or a portion of her security deposit given that matter has already been adjudicated. The tenant testified that she makes no specific further request with respect to an "other" remedy under the Act and withdraws that portion of her application.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss?

Is the tenant entitled to an order to allowing her to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on November 1, 2011 with a rental amount of \$1200.00 payable on the first of each month. The tenant originally paid a security deposit of \$550.00 and a pet damage deposit of \$300.00. Both parties agree the tenancy ended July 31, 2014.

After a previous dispute resolution hearing, a monetary order was issued in the tenant's favour for partial recovery of those deposits.

The tenant maintained in her testimony that several matters remained unaddressed during the course of her almost-three year tenancy. As a result, she sought a monetary order of \$2100.00. She testified that;

- the furnace was broken the three years she lived there;
- she paid someone to trim the trees and do yard maintenance;
- she lost wages as a result of preparing for and attending this dispute resolution hearing;
- she overpaid rent by \$50.00 on three separate occasions;

- she painted the rental unit for approximately 40 hours in total, being paid for only approximately 20 hours by the landlords.

The tenant testified that a new furnace was needed in the rental unit but never provided. She testified that it was non-functional most of the time. She testified that, on more than one occasion, the landlord sent repairmen and that the furnace would work temporarily but then stop working again. She testified that there was a natural gas fireplace within the unit and other heat sources but it was very cold for herself and her children in their rooms. She indicated that \$1200.00 would be an appropriate cost to compensate her for this lack of heat within the unit.

The landlords both testified individually that, every time they were contacted by the tenant, they sent someone to repair and investigate the furnace. Landlord JC testified that most of the time, the heat from the furnace was working within the unit and that, when it was not, he ensured it was repaired as quickly as possible. He also reiterated the tenant's testimony, pointing out that the tenant had other sources of heat within the unit. The tenant claimed her loss was in very large heating bills. However, she did not provide any documentary evidence with respect to those bills.

The tenant testified that she consulted the landlord with respect to trimming back trees that she felt were dangerously close to her duplex unit. She testified that the landlord approved her hiring someone to trim the trees and that she did hire someone who trimmed the trees at a cost of \$472.50. She testified that the landlord did not pay the cost incurred. She also testified that she hired someone to top another tree that she felt was a danger near the residential premises. She testified that the landlord also approved this cost.

The landlord JC adamantly denied agreeing to pay for tree trimming costs or the costs of topping a tree as described by the tenant in her testimony. Landlord KC testified that they always get several quotes for doing any labour at the home and would have done so for tree trimming if this had been raised with them by the tenant.

The tenant testified that she spend several hours preparing her digital and paper evidence for hearing. She testified that she had to take time off to prepare the materials and also to attend both this and the previous dispute resolution hearing. She estimates her compensation for loss of wage should approximate \$262.50.

The landlord JC submitted that both he and his wife/co-landlord had taken time off work to attend the hearing. He submitted that attending court or hearings such as this are a cost of resolving disputes and he submitted that the tenant should not be entitled to be compensated for making her application.

The tenant testified that she overpaid her rent on three occasions. She testified that many months she was late with rent and was required to pay a late fee. Some months, because of difficult personal circumstances, she made banking errors and paid the late fee amount of

\$50.00 when she was not in fact late with the rent. She testified that she spoke to the landlord about this and he agreed to compensate her in the amount of \$150.00.

The landlord confirmed that the tenant was often late with rent. He acknowledged that she overpaid on June 2, 2014 by \$50.00 and that he owes the tenant that amount. He did not discount the possibility that she had overpaid on another occasion but indicated he had no discussion with the tenant and had no record of this issue prior to the tenant filing for dispute resolution.

The tenant testified that she did extensive painting within the rental unit and that the landlord promised to compensate her for her work. She testified that the landlords paid her \$200.00 towards her time and labour for painting but that she is owed another \$200.00 for the painting work done.

The landlord testified that he did not agree to pay the tenant for painting but, given the work she put in and that he felt some sympathy for her situation, he paid her \$200.00. He testified that, if he was going to pay more than that, he would have just hired someone to do so.

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.

With respect to the claim for compensation for a broken furnace during the tenancy, the tenant has not provided evidence, on a balance or probabilities that the furnace was broken the entirety of her tenancy. The tenant has also not provided sufficient evidence of any loss she suffered as a result of the lack of heat from the furnace. She testified that she had more than one other source of heat within the residence. She testified that, when she complained of issues with respect to the heat, the landlords sent someone to address the issue and make repairs, as they stated in their testimony. While heat is an important facility in any home, I do not find that the tenant has met the burden of proof with respect to existence of damage or loss, any violation or contravention of the *Act* by the landlords or established an actual loss with respect to the furnace. The tenant claimed her loss was in very large heating bills. However, she did not provide any documentary evidence with respect to those bills and therefore has not met the burden of proof required to be compensated by the landlord.

With respect to the claim for reimbursement for tree trimming, the tenant has not proven, on a balance of probabilities that there existed an issue with trees requiring trimming or that the landlords contravened the *Act* in some regard by failing to do so. The tenant did not provide

proof on a balance of probabilities that this issue arose and that the landlords failed to address the issue. I also note that the tenant has not shown that the landlords agreed to bear these costs.

With respect to the loss of wages claim, the tenant has supplied no evidence of actual loss. She has testified that she was required to take time off work. However, she also testified that she does not work full time or a regular schedule. She provided no evidence with respect to her employment or any evidence to show, on a balance of probabilities that her work or her pay was impacted by these hearings. I also note that the teleconference process for dispute resolution is meant to best accommodate individuals with respect to limiting any costs of making an application with respect to a tenancy.

With respect to the overpayment of rent, the tenant provided no evidence of these overpayments. The landlord acknowledged that the tenant had overpaid \$50.00 and that she was owed this amount. Therefore, she is entitled, in the circumstances, to an order including \$50.00 for an overpayment of rent.

With respect to the compensation for painting, I find that the tenant has been sufficiently compensated for the costs related to painting the rental unit. Both parties testified that the landlord compensated the tenant for all out of pocket expenses. Both parties testified that the landlord paid \$200.00 to the tenant for her work in painting the rental unit. I accept the landlord's testimony that, while this payment for her work was not pre-arranged, he felt morally obliged to provide some monetary compensation to the tenant in all of the circumstances. The tenant has provided no evidence that reflects an agreement to be paid for painting. She also testified that it was her wish to paint the rental unit. I find the tenant has not proven on a balance of probabilities that she incurred costs or losses that were not compensated as required.

I find that, excluding the \$50.00 overpayment of rent, the tenant has not provided proof or met the burden of proof to show that she is entitled to compensation from the landlord pursuant to section 67 of the *Act*.

Further, as I have found that the tenant has not proven there is financial loss or loss of services or facilities with respect to this tenancy and particularly the above items (heating/furnace, tree trimming, painting work), I find that the tenant is not entitled to a rent reduction with respect to these claims.

As the tenant was unsuccessful in the majority of her application, I find the tenant is not entitled to recover the \$50.00 filing fee for this application from the landlord.

Conclusion

I dismiss the tenant's application with respect to any rent reduction or other monetary award without leave to reapply. I dismiss the tenant's application for return of her security deposit without leave to reapply. I dismiss the tenant's application to recover her filing fee.

I issue a monetary order in the amount of \$50.00 in favour of the tenant.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 3, 2015

Residential Tenancy Branch