



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O

Introduction

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

- a monetary order for money owed compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- other unspecified remedies.

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. "Witness BS" testified on behalf of the landlord at this hearing. This hearing lasted approximately 73 minutes, in order to allow both parties to present their full submissions at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package on January 26, 2015 and the tenant's amended application for dispute resolution hearing package ("Application") on July 31, 2015. The landlord stated that she received further written evidence from the tenant on August 4, 2015. The landlord indicated that she reviewed the tenant's Application as well as all of the written evidence prior to this hearing. The landlord testified that she had no objection to proceeding with this hearing on the basis of the tenant's Application as well as all of the written evidence, despite the fact that she received it late, less than 14 days prior to this hearing, contrary to Rule 3.14 of the Residential Tenancy Branch *Rules of Procedure*. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application and all of the written evidence. I advised both parties that I would be proceeding with this hearing as well as considering the tenant's Application and all of the tenant's written evidence at this hearing and in my decision, on the basis of the landlord's consent.

The tenant confirmed receipt of the landlord's written evidence package and confirmed that she had an opportunity to review all of the written evidence prior to this hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's written evidence package.

At the outset of the hearing, the tenant withdrew her Application for "other" unspecified relief, claiming that it was made in error. Accordingly, this portion of the tenant's Application is withdrawn.

Issue to be Decided

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

Background and Evidence

The landlord confirmed that this month-to-month tenancy began on July 1, 2013 and ended on January 3, 2015. Monthly rent in the amount of \$475.00 was payable on the first day of each month. A security deposit was not required for this tenancy. The landlord indicated that she rents this unit herself from another landlord, witness BS. The landlord stated that she had written permission from witness BS to sublet this rental unit to the tenant. Witness BS confirmed this fact.

Witness BS confirmed that he changed the locks to the rental unit on January 3, 2015, after being asked to do so by the landlord. The parties dispute the time that the locks were changed. Witness BS stated that he was advised by the landlord that the rent was unpaid and that the tenant was suicidal in the rental unit. The tenant agreed that she did not pay full rent for January 2015 and she offered to pay partial rent amounts to the landlord but the landlord attempted to evict her instead. The tenant stated that when she realized that she was being evicted, she became suicidal and the landlord called the police. Both parties agreed that the police and ambulance arrived and the tenant was transported to the hospital on January 3, 2015.

The tenant's original application sought \$7,000.00 in compensation but her amended Application is for \$690.75 for all of the below costs.

The tenant stated that when she returned from the hospital to retrieve her belongings, the landlord had already packed her belongings and set them aside. The tenant

indicated that she spent \$18.30 on taxi fare in order to retrieve some of her belongings but she did not provide a receipt for this amount. The tenant explained that she could not find all of her belongings during this trip because the landlord packed everything, so her nephew had to return on her behalf twice more, and spent \$76.01 and \$68.17 on a moving truck to retrieve the remaining belongings. The tenant provided two receipts for these amounts. The tenant stated that she had to borrow \$125.00 in order to buy toiletries and clothing because she was locked out of the rental unit and she needed essential items to live. The tenant maintained that she borrowed a further \$325.00 to place a security deposit on a new rental unit because she did not have time to save up money for this deposit. The tenant stated that she had a receipt for this amount but failed to submit it for this hearing. The tenant also stated that income assistance or mental health assistance would have paid for this security deposit if she had received a proper eviction notice from the landlord for unpaid rent, rather than being locked out of her rental unit and illegally evicted. The tenant stated that she also lost approximately \$25.00 in food that was left behind in the rental unit. The tenant indicated that she spent \$13.27 in registered mail fees for mailing her Application to the landlord for this hearing.

The landlord disputes all of the above costs, stating that the tenant advised her that she was leaving the rental unit anyway and that she used her rent money in order to place a security deposit on a new unit. The landlord claims that the tenant asked her for an eviction notice prior to any rent being unpaid in this rental unit, in order to have her costs paid by income assistance but that the landlord refused because she did not want to participate in a fraudulent scheme.

The tenant explained that she lost \$40.00 for a ceiling fan that is still located in the rental unit, because the landlord refused to allow the tenant's nephew to retrieve this fan. The landlord stated that she agrees that the tenant's ceiling fan is located in the rental unit and that the tenant is entitled to compensation for this fan.

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 or 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 and show efforts to minimize this loss. In this

case, the onus is on the tenant to prove, on a balance of probabilities, that the landlord caused her loss and that this loss is compensable.

In summary, the tenant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

As the landlord agreed to the \$40.00 cost for replacing the tenant's ceiling fan, I find that the tenant is entitled to this amount from the landlord.

As advised to both parties during the hearing, the tenant is not entitled to \$13.27 for registered mail fees for her Application. The only hearing-related costs that are recoverable under section 72 of the *Act* are for filing fees. Accordingly, the tenant's claim for registered mail fees of \$13.27 is dismissed without leave to reapply.

I dismiss the tenant's claim for \$18.30 for taxi fare, \$125.00 for toiletries and clothing and \$325.00 for the security deposit paid for the tenant's new unit, without leave to reapply. The tenant did not provide receipts for these amounts and therefore, her claim fails part 3 of the test above. Although the tenant claimed that income assistance or mental health assistance would have paid for her security deposit on her new place, she did not provide written documentary evidence of this fact, from the appropriate authority.

I dismiss the tenant's claim for \$144.18 for moving truck expenses, without leave to reapply. Although the tenant provided receipts for these amounts, I find that the tenant would have incurred these costs in any event, when she moved to another unit, despite the fact that the tenant moved sooner than expected. Although the landlord was not entitled to change the locks to the rental unit at the time that it was done, the tenant was provided with access to the unit to retrieve her belongings on multiple occasions and the landlord provided documentary evidence of this fact with her written evidence. The tenant did not demonstrate that she expended unreasonable costs of moving. I find that the tenant has not provided sufficient evidence that the landlord is responsible for these moving costs. Therefore, I find that the tenant's claim fails part 2 of the test above.

I dismiss the tenant's claim of \$25.00 for food she left behind in the rental unit, without leave to reapply. As noted above, I find that the landlord provided the tenant with access to retrieve her belongings. The tenant did not provide receipts or an inventory of the food left behind, justifying the amount noted above. I find that the tenant's claim fails all four parts of the test above.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$40.00 against the landlord. The tenant is provided with this monetary 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 this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application for other unspecified relief is withdrawn.

The remainder of the tenant's 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: August 17, 2015

Residential Tenancy Branch

