



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Home Life Peninsula Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

This hearing dealt with an application by the tenant seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background, Evidence

The tenants' testimony is as follows. The tenancy was scheduled to begin on June 1, 2015. The tenants were obligated to pay \$700.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$350.00 security deposit. The tenant stated that on May 30, 2015 the landlord contacted her advising her that they were having problems with the existing tenant in the subject unit and that the existing tenant did not want to move out. The tenant stated that this caused her great stress and anxiety. The tenant stated that the landlord offered her other suites at other locations but nothing that she felt was suitable in terms of budget, location or proximity to sky train.

The tenant stated that she incurred some costs due to this and that the landlord should pay for it. The tenant stated that she had travel and meal expenses for coming to view the suite as the tenant resided in Victoria. The tenant stated that the landlord had set up pre-authorized payment with her and charged her account on June 1, which she had reversed at her bank for a fee. The tenant also stated that she seeks "moral compensation" for the two difficult months she endured resulting from this.

The tenant is applying for the following:

1.	Translink – 4 receipts	\$39.00
2.	B.C. Ferries	\$99.70
3.	Patricia Motel – March 16, 2015	\$51.75
4.	Meals (on trips)	\$113.90
5.	Registered Mail	\$11.34

6.	Stop Payment Fee	\$12.50
7.	Storage (garage)	\$100.00
8.	Moral Damage	\$24, 571.80
	TOTAL	\$24, 999.99

The landlord's testimony is as follows. The landlord disputes the tenants' entire claim. The landlord stated that they were subject to the process of the Branch in terms of dealing with the pre-existing tenant. The landlord stated that they were doing everything that they could to address the issue. The landlord stated that the subject tenant was offered several different alternative locations but declined. The landlord stated that they were "keeping the tenant in the loop" and were continuing to make efforts to address the problem but the tenant abruptly cut off communications and no longer wanted to rent the unit and wanted her deposit and rent back.

The landlord stated that they immediately returned the deposit and that the tenant over-reacted in having the pre-authorized payment reversed. The landlord stated that they would have gladly returned the money and the only reason the payment went through was that the landlord thought the tenant would become a tenant and obtain a unit.

Analysis

Section 67 of the Act states that when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. **To prove a loss the applicant must satisfy all four of 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 other party 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.

The tenant is the applicant in this matter and bears the responsibility of meeting all four grounds as listed above. The tenant has failed to satisfy me on grounds #2, #3 and #4.

Based on the above, the tenant has failed to meet the requirements in proving their claim under Section 67 of the Act, and I therefore find that she is not entitled to any of the amounts that she seeks. However, I do find that the tenant is entitled to a nominal award.

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the

hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. Although I have found that the tenant is not entitled to the amount as claimed, I find that a nominal award of \$250.00 is appropriate.

Conclusion

I grant the tenant a monetary order under section 67 for the balance due of \$250.00. This order may be filed in the Small Claims Court and enforced as an order 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: October 20, 2015

Residential Tenancy Branch

