



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, 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 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1:54 pm in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 pm. The tenant/applicant attended the hearing and was given a full opportunity to be heard, and to make submissions with respect to his application.

The tenant testified that he served the landlord with his Application for Dispute Resolution ("ADR") by registered mail on November 19, 2015. He provided a Canada Post receipt and tracking information. He provided further evidence that demonstrated the tenant's ADR was delivered to the landlord on November 21, 2015. In accordance with section 89 and 90 of the *Act* as well as the deemed service provisions contained within the Residential Tenancy Policy Guideline No. 12, I find that the landlord was deemed served with the tenant's ADR on or before November 22, 2015.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for loss as a result of this tenancy?
Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenant testified that this tenancy began on June 16, 2015 as a six month fixed term with a rental amount of \$2000.00 payable on the first of each month. The tenant explained that, prior to being a tenant at this residential property, he owned the

property. He and his co-tenant/wife entered into an agreement with the new owner to rent the property for a period of time before moving out of the residential premises. The tenant testified that he vacated the rental unit on September 15, 2015 after providing notice to end tenancy to the landlord. The tenant testified that he has applied for a monetary award of \$2000.00 as a result of the landlord disconnecting the electricity to his rental unit before the end of his tenancy.

The tenant submitted a copy of his residential tenancy agreement as well as the addendum to the agreement as evidence in this hearing. The tenancy agreement addendum includes provision no. 3: that "the tenants will be responsible for monthly utility bills which include... electric, gas, telephone, cable and Internet". The tenant testified that the electricity bill was in his name but, despite this fact, it was disconnected without his approval.

The tenant testified that, on September 13, 2015, the landlord cut off the electricity. The tenant testified that this cut-off date was two days prior to his scheduled move-out date. The tenant submitted correspondence from the electricity company to the tenant that indicated that the registered owner of the property and not the tenant instigated the removal of service at the tenant's rental unit address. The tenant testified that, as a result of the electricity disconnection, the tenant;

- Lost a substantial amount of frozen food;
- Could not make meals at home and had to eat in restaurants;
- Could not stay in the home and had to reside with family members;
- Purchased grocery gift cards for their family members for housing and feeding them;
- Lost entire use of their residence for the final two days of their tenancy.

The tenant testified that he had not completed packing before the electricity was cut-off in his rental unit. He testified that he lost a substantial amount of frozen food. He did not provide any further details regarding the frozen food, receipts or other documentary or photographic evidence.

The tenant testified that, for the final two days of their tenancy, it was very difficult to live in or pack in the rental unit. He testified that he stayed with family, that he was provided with meals by family and at some meals at restaurants. He submitted receipts with respect to the restaurant meals. He also submitted copies of gift card receipts indicating that he repaid the family for their food provisions by giving them gift cards.

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.

In this case, the tenant has provided sworn undisputed testimony that he suffered some direct financial loss as well as other losses as a result of the loss of electricity, particularly with respect to use of the property. The tenant submitted evidence in the form of receipts to show that he ate in restaurants on a reasonable number of occasions over the course of two days. His undisputed sworn testimony included the fact that he and his family were forced to stay with and impose upon family. Based on all of the undisputed sworn testimony of the tenant as well as the documentary evidence submitted, I find that the tenant has shown that he and his family were unable to make use of the rental unit for the final two days of the tenancy. I also find that the tenant has shown that he and his family were forced to stay and eat outside of their home during an otherwise very transitional period (preparing for a household move).

Given my finding that the tenant did not have practical and meaningful use of his rental unit for the two final days of his tenancy, I find that he is entitled to recover an amount from the landlord in accordance with a two day rent reduction. I find that the tenant's daily rent is approximately \$66.00 and therefore he is entitled to two days' rental for the unit totalling \$132.00.

Given my finding that it was necessary for the tenant and his family to eat in restaurants for two days, I find that the tenant is entitled to the amount of his receipts, totalling \$144.99. [The receipt amounts are; \$56.50; 35.88; 27.56; 25.05.] I note that the tenant mitigated the costs of having an accommodation without electricity by staying with family and eating with family for most of the two days before he was able to move to his new home.

I find that the tenant has shown that the loss referenced above was suffered by the tenant as a result of the actions of the landlord in violation of the tenancy agreement and the *Act* by shutting off the electricity prior to the end of the tenancy. The tenancy

agreement provides for electricity and the *Residential Tenancy Act* provides that the landlord maintain the rental unit in a manner that meets health and safety standards. I find that shutting off the electricity undermines these standards and therefore violates the *Act*. I find that the tenant has shown the landlord contravened the *Act* in disconnecting the electricity prior to the tenant's formal move-out and therefore the entitlement described above for two days' rent and the cost of eating out of the home are the responsibility of the landlord.

With respect to the tenant's claim that frozen food was lost, I find the tenant has not provided sufficient evidence of the loss of frozen food. Without receipts or other evidence, there is no clear indication of how much frozen food was in the home several days prior to their move, what may have been lost and its worth. Therefore, I do not find that the tenant is entitled to recover any amount related to the claim of loss of frozen food with the disconnection of the electricity.

With respect to the payment gift cards to his family, I do not find that these gift cards are sufficiently tied to the disconnection of electricity to warrant the recovery of their cost. The tenant acted kindly in providing gifts/grocery cards to his family by way of compensation for the hospitality. That does not oblige the landlord to pay the cost of those gifts.

The tenant also sought costs related to preparing photographs for this application. I do not find that the tenant is entitled to recover the costs related to preparing this application and any evidence that he determined would support his claim.

The tenant claims loss of use of approximately \$800.00 testifying that this loss of use of the rental unit over the course of these two days was more than a loss of the ability to cook in the rental unit and reside in the rental unit. The tenant submitted that the disconnection of the electricity is a fundamental part of the tenancy and requires additional compensation for the related inconvenience, and expense over these two days.

I find that the tenant is entitled to a nominal amount to reflect the actions of the landlord in disconnecting the electricity. I find that the tenant is entitled to a total of \$500.00 to reflect the impact of the actions of the landlord by disconnecting the electricity two days prior to the end of the tenancy, resulting in varying levels of inconvenience and hardship to the tenant and his family.

As the tenant has been successful in his application, I find that he is entitled to recover the filing fee for this application from the landlord.

Conclusion

I issue a monetary order to the tenant as follows;

Item	Amount
2 days' rental for the unit	\$132.00
Restaurant receipts/costs	144.99
Nominal award for loss of use	500.00
Recovery of the filing fee for this application	50.00
Total Monetary Order	\$826.99

The tenant is provided with these Orders 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: March 18, 2016

Residential Tenancy Branch

