



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF, O

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;
- a monetary order for the return of the pet deposit pursuant to section 38 and 67 of the Act;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was served with the tenant's notice of hearing package via Canada Post Regular Mail on November 25, 2015. The landlord, M.L. (the landlords) confirmed in their direct testimony that the notice of hearing package was received in this manner a few days later. I accept the undisputed affirmed testimony of both parties and find that the landlord was deemed served with the tenant's notice of hearing package as per section 90 of the Act.

The tenant provided affirmed testimony that the 39 pages of documentary evidence were not served to the landlord. The landlords confirmed that no evidence was provided to them from the tenant. The landlords also stated that no documentary evidence was provided by the landlord. On the basis of this undisputed evidence from both parties I find that the tenant cannot be said to have complied with sections 88 of the Act in failing to serve the tenant's submitted documentary evidence. As such, the tenant's documentary evidence is excluded as the tenant has failed to provide to the landlords a fair opportunity to respond to the tenant's claims. The hearing shall proceed based solely on direct testimony from both parties.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for loss, recovery of the pet deposit and filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties agreed that there was a signed tenancy agreement which began on June 1, 2015 on a fixed term tenancy of 6 months ending on November 30, 2015. Both parties agreed that the monthly rent was \$650.00 payable on the 1st day of each month and that a \$325.00 security deposit and a \$325.00 pet damage deposit were paid.

The tenant seeks a monetary claim of \$675.00 and clarified in her direct testimony that the tenant's monetary claim is not listed or detailed in her dispute, but that it consists of:

\$250.00	Compensation for the cost of firewood for heat.
\$100.00	Compensation for the cost of lost food due to broken refrigerator.
\$325.00	Return of the Pet Damage Deposit.

The tenant provided affirmed testimony that heat was included with the rent and that the landlord failed to provide it. The tenant stated that she spend \$250.00 to buy food for the stove heater. The landlords dispute this claim stating that the tenant had the use of an oil heater and that at no time during the tenancy did the tenant notify the landlords of any issues regarding the heater.

The tenant provided affirmed testimony that the refrigerator was broken causing the loss of groceries in the refrigerator costing approximately, \$100.00. The tenant stated that upon being notified the landlord replaced the refrigerator after 30 days which she went without. The landlords dispute these claims stating that at no time did the tenant provide any notification to them that there was an issue with the refrigerator. The landlord provided affirmed testimony that the tenant notified them that the refrigerator required her to defrost it on a regular basis. The landlords stated the new refrigerator was obtained for the tenant's use within two weeks of the request and that the tenant never suffered a loss of use of the refrigerator at any time.

The tenant seeks the return of the \$325.00 pet damage deposit held by the landlord. The landlords provided undisputed affirmed testimony that the landlords were the recipient of a monetary order for \$650.00 and that the \$325.00 pet damage deposit was applied to this monetary award. The tenant confirmed that the landlord was awarded a \$650.00 monetary award and that she was advised that the landlord may retain the \$325.00 pet damage deposit against the landlords' obtained order.

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. 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 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.

Both parties rely solely on direct testimony. The tenant has provided affirmed testimony of the claim and the landlords have provided affirmed testimony of the claim which conflicts and contradicts the tenant's claim. As such, I find on a balance of probabilities that the tenant has failed in her claim as the tenant has failed to provide sufficient evidence to satisfy me of her claim.

Conclusion

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: June 21, 2016

Residential Tenancy Branch