



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on December 23, 2015. The Tenant filed seeking an \$8,388.03 Monetary Order for: money owed or compensation for damage or loss under the *Act*, regulations, or tenancy agreement; for the return of the security deposit; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Tenant. No one was in attendance on behalf of the Landlord. The Tenant provided affirmed testimony that the Landlord was served notice of this application and this hearing by registered mail on December 24, 2015. The Tenant stated the package had been sent to the address which the Landlord provided to the Arbitrator during the November 17, 2015 hearing. Canada Post tracking information was provided in the Tenant's oral submissions.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up the registered mail.

Based on the undisputed evidence of the Tenant, I find that the Landlord was deemed served notice of the Tenant's application for Dispute Resolution and this hearing on December 29, 2015, five days after they were mailed, pursuant to section 90 *Act*. Accordingly, I proceeded to hear the undisputed evidence of the Tenant, in absence of the Landlord.

Res judicata is a doctrine that prevents rehearing of claims and issues, arising from the same cause of action between the same parties after a final judgment was previously issued on the merits of the case. Based on the aforementioned I hereby dismiss the tenant's application without leave to reapply.

As indicated on the front page of this Decision, the Tenant had filed a previous application for Dispute Resolution that was scheduled to be heard as a cross application to the Landlord's application on November 17, 2015. The Arbitrator who conducted the November 17, 2015 hearing issued a legally binding Decision on December 7, 2015

where she dismissed the Tenant's application, with leave to reapply, and made orders regarding the disbursement of the security deposit.

Upon review of the foregoing, I find there is no provision under the *Residential Tenancy Act* (the *Act*) which would allow the matter of the disbursement of the security deposit or the Tenant's request to recover the filing fee on that first application to be reconvened and reheard in this hearing; as to do so would constitute *res judicata*. Accordingly, I declined to hear the Tenant's request for the return of double his security deposit of \$2,100.00 (2 x \$1,050.00) and the filing fee paid for that previous application. I proceeded to hear the undisputed evidence of the Tenant regarding his application for money owed or compensation for damage or loss under the *Act*, regulations, or tenancy agreement and to recover the cost of the filing fee for his second application for Dispute Resolution.

Issue(s) to be Decided

Has the Tenant proven entitlement to monetary compensation?

Background and Evidence

The Tenant confirmed he first moved into the rental unit on May 1, 2013, and initially his rent was \$2100.00. The parties entered into a new tenancy agreement which began on July 1, 2014, for a monthly rent of \$2400.00. The Tenant vacated the rental property as of May 15, 2015.

The Tenant had paid a security deposit of \$1050.00. The disbursement of that security deposit was determined in the previous hearing, as stated above.

As per the tenancy agreement the Tenant was required to pay 2/3 of the hydro and natural gas utilities and the Landlord was to pay the remaining 1/3 of each utility bill. The Tenant submitted the Landlord had agreed to pay him to: forward the Landlord's mail to the Landlord via courier; have the furnace serviced; and to have the basement cleaned prior to being occupied by new tenants

The Tenant now seeks to **\$1,206.03** to recover the costs for the aforementioned as follows: \$353.61 for 1/3 of the hydro costs; \$612.42 for 1/3 of the natural gas costs; \$90.00 for service of the furnace; \$100.00 courier charges; and \$50.00 for cleaning the basement.

On April 24, 2015 the Tenant was served a 2 Month Notice to end tenancy for landlord's use of the property listing the following reason: "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member".

The Tenant submitted evidence that on May 17, 2015 the rental unit was listed on the internet. The Tenant argued that the Landlord nor did his family members occupy the rental unit; as it has been rented to a tenant ever since the Tenant moved out. As a

result, the Tenant now seeks compensation equal to two month's rent of **\$4,800.00** (2 x \$2,400.00).

In addition to the filing fee the Tenant also sought to recover \$30.00 in registered mail costs for serving his documents for this application.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the undisputed evidence as submitted by the Tenant.

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 51(2) of the *Act* stipulates that in addition to the amount payable under subsection (1), if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In regards to the Tenant's claim for registered mail fees for bringing this application forward, I find that the Tenant has chosen to incur these costs that cannot be assumed by the Landlord. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. Costs incurred due to a service method choice are not a breach of the *Act*. Therefore, I find that the Tenant may not claim mail costs, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*.

Regarding the remaining items sought by the Tenant, I accept the undisputed evidence of the Tenant that he was entitled to compensation pursuant to sections 7 and 51 of the *Act* for: \$966.03 utilities; \$90.00 furnace service; \$100.00 courier costs; \$50.00 cleaning costs; and \$4,800.00 compensation for the 2 Month Notice. Accordingly, I grant the award in the amount of **\$6,006.03**, pursuant to section 67 of the *Act*.

The balance of the Tenant's application was dismissed, without leave to reapply.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has primarily succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the *Act*.

Based on the above, I hereby order the Landlord to pay to the Tenant **\$6,106.03** (\$6,006.03 + \$100.00) forthwith. In the event the Landlord does not comply, the Tenant has been issued a Monetary Order for **\$6,106.03**. This Order must be served upon the Landlord and may be enforced through Small Claims Court.

Conclusion

The Tenant was primarily successful with their application and was awarded monetary compensation in the amount of **\$6,106.03**.

This decision is final, legally binding, and 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 30, 2016

Residential Tenancy Branch