



Dispute Resolution Services

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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.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party. I accept the undisputed affirmed evidence of both parties and find that both parties were properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. Both parties are deemed to have been properly served 5 days later as per section 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed?

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.

This tenancy began on March 1, 2012 on a 1 year fixed term tenancy and then thereafter on a month-to-month basis as shown by the landlord's submitted copy of the signed tenancy agreement. The monthly rent was \$1,259.00 payable on the 1st day of each month and a security deposit of \$629.50 was paid.

The tenant seeks a monetary claim of \$451.00 from the landlord as compensation for inconveniences suffered during the tenancy. The tenant provided testimony that \$451.00 was paid by the landlord to the tenant as part of flooding inconveniences suffered by the tenant, but after the tenant moved-out the landlord cancelled the cheque given by the landlord.

The tenant has provided a copy of a letter dated November 25, 2015 and again on December 16, 2015 from the landlord which shows a breakdown of the owed utilities and repayment to the tenant. It states in part,

*...Since I understand your move out is due to the flood and the renovation coming up, in order to thank you all for your co-operations, I would like to refund 50% of the rent that I collected for Nov 2015, which is \$1230-\$328=\$902X50%=\$451.00 to help out with the move expenses and compensate the inconveniences caused in the past during the flood.
With the deposit of this cheque, both parties satisfied with the settlement and no more legal action would be taken in the future.*

The landlord provided testimony confirming that she cancelled the \$451.00 cheque at the tenant's request. The landlord stated that the reason for this was that the tenant refused to end his dispute for more compensation. The tenant disputed the landlord's claims stating that he did not refuse the landlord's compensation and that he did not ask for the cheque to be cancelled.

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.

Both parties have confirmed that there was an offer and acceptance of a \$451.00 payment from the landlord to the tenant as compensation for flood inconveniences. Both parties have confirmed that the landlord cancelled the \$451.00 payment to the tenant. The landlord has claimed that she cancelled the cheques at the request of the tenant. The tenant has disputed this.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, the landlord has claimed that the tenant requested that the \$451.00 payment to be cancelled which is disputed by the tenant. I find on a balance of probabilities that the landlord has failed to provide sufficient evidence to satisfy me of this claim. I prefer the evidence of the tenant over that of the landlord. As such, the tenant has established a claim for \$451.00.

The tenant having been successful is entitled to recovery of the \$50.00 filing fee.

Conclusion

I grant a monetary order in the tenant's favor of \$501.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial 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: August 02, 2016

Residential Tenancy Branch

