



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 an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation for loss under the *Act* and for the filing fee.

The landlord did not appear for the hearing. I accept the evidence of the tenant that the landlord was served with notice of this application and hearing by registered mail on August 08, 2015 and then again on January 20, 2016, to the address provided by the landlord as the service address for the landlord. The tenant stated that she tracked the package on line and found that the landlord had received it on January 21, 2016 and had signed in acknowledgment.

Pursuant to section 90(a) of the *Act* I deem the landlord as having been served the documents and I proceeded with the hearing in the landlord's absence.

The tenant attended the hearing and was given full opportunity to present evidence, make submissions and give affirmed testimony.

Issues to be decided

Is the tenant entitled to compensation for moving costs, the cost of hotel stay, mailing, the filing fee and pain and suffering?

Background and Evidence

The parties entered into a tenancy agreement on December 02, 2015. The tenant filed two pages of the tenancy agreement into evidence. The tenancy was due to start on January 01, 2016. The amount of rent was not recorded on the agreement. The tenant stated that the rent was \$1,500.00 per month.

The tenant testified that she gave the landlord 12 post-dated rent cheques at the time she signed the tenancy agreement. A security deposit was not paid.

The rental unit is an apartment in a brand new building complex, which was due to be ready for occupation on January 01, 2016. The tenant contacted the landlord on December 30, 2015 regarding arrangements to pick up the keys. The landlord informed the tenant that the unit was not ready.

On January 03, 2016, the landlord gave the tenant the keys to the rental unit and a cheque for \$200.00 as compensation for the late availability of the rental unit.

The tenant had sold her own home and the new owners were scheduled to take over the home on January 10, 2016. The tenant stated that she had planned to move into her new rental unit on January 01, 2016, and had put a stop to services at her home for January 07, 2016. Since the new unit was not ready as of January 03, 2016, the tenant booked movers for January 10, 2016.

On January 09, 2016, the tenant visited the unit along with her daughter who was in town to help her move. The tenant stated that she is disabled and had requested help from her daughter. When they visited the unit on January 09, 2016, the elevators were not in operation, the appliances were not installed and there was no supply of electric power to the rental unit.

The on-site manager informed the tenant that the City clearances had not been obtained and that she would not be able to move in until the inspections were done and the occupancy permit was issued. The manager estimated that it would be about three weeks before the tenant could move in. The manager stated that the tenant could move her belongings in but the door to the unit had to remain unlocked for the workers to finish the installation of appliances and other incomplete jobs.

The tenant stated that she had no choice but to move into a hotel as the purchasers of her home wanted to move in on January 10, 2016. The tenant testified that upon contacting the landlord, she was informed that the landlord was going out of town and would provide the cost of 2-3 hours of moving of the tenant's belongings.

The tenant had already hired the movers for January 10, 2016 and since the rental unit was not available, the tenant had the movers move her belongings to storage. The tenant testified that on January 09, 2016, she checked into a hotel, but since it was expensive, she moved into a more affordable hotel, the next day.

The tenant stated that since all her personal items including her medication was in storage, it was difficult and inconvenient for her to live in temporary accommodation. Her hardship was compounded by the low winter temperatures and her disability. On January 10, 2016, the tenant also sought the help of the realtor who sold her house. The tenant's realtor contacted the landlord and was informed that the tenancy was cancelled. The landlord returned the post-dated cheques to the tenant's agent.

The tenant started looking for another place to rent. Due to her disability and the time of year, she stated that it was very difficult to find suitable accommodation. The tenant found a place for February 15, 2016.

The tenant also pointed out that the landlord was made aware of the delay of completion of the rental unit in a letter dated December 10, 2015, from the lawyer of the building construction project. The tenant added that despite being aware of the delay, the landlord failed to notify the tenant. The landlord provided the tenant with a copy of the letter on January 03, 2016, at the time the tenant picked up the keys to the rental unit. The tenant filed a copy of this letter into evidence. The tenant waited until January 09, 2016 to make the second attempt to move in which was also unsuccessful.

The tenant's claim is as follows:

1.	Mailing costs	\$24.42
2.	Moving items out of storage	\$780.00
3.	Cost of storage	\$758.88
4.	Hotel stay for January 10, 2016	\$227.70
5.	Hotel stay January 11 to February 16, 2016	\$2,194.47
6.	Cost of airfare of helper	\$725.27
7.	Purchase of medication	\$80.00
8.	Purchase of kitchen items	\$56.37
9.	Pain and suffering	\$5,000.00
10	Filing Fee	\$100.00
	Total	\$9,947.11

Analysis

1. Mailing costs - \$24.42

The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore the tenant's claim for \$24.42 is dismissed.

2. Moving items out of storage - \$780.00

The tenant provided a receipt in the amount of \$780.00 which she stated was the cost of moving her personal belongings out of storage to her new rental unit, on February 15, 2016. The receipt is dated February 16, 2016.

Since the tenant was unable to move into the dispute rental unit, I find she was forced to move her belongings to storage and therefore incurred extra moving costs, to move her belongings to the next rental unit. I find that the tenant is entitled to her claim.

3. Cost of storage - \$758.00

The landlord failed to provide the rental unit for occupation on the date indicated in the tenancy agreement. The tenant was forced to move her belongings into storage. The tenant has provided a receipt for the cost she incurred.

I find that the landlord breached a term of the tenancy agreement and therefore is responsible for the additional costs incurred by the tenant as a result of this breach.

4. Hotel stay for January 09, 2016 - \$227.70

5. Hotel stay for January 10 to February 16, 2016 - \$2,194.47

Based on the sworn testimony of the tenant, I find that the tenant had sold her home and the completion date of the sale was January 10, 2016. The tenancy at the dispute rental unit was due to start on January 01, 2016. However the unit was not cleared for occupation by January 10, 2016 and therefore the tenant was required to find alternative accommodation.

The tenant has filed a hotel receipt for her stay on January 09, 2016 in the amount of \$113.85. The tenant stated that to mitigate her losses, she moved into a hotel that cost significantly less, while she looked for another place to rent.

The tenant stayed in this hotel until she was able to move into the new rental. The tenant filed proof of payment in the amount of \$2,194.47. I find that the tenant is entitled to the cost of her hotel stay.

6. Cost of airfare of helper - \$725.27

The tenant has already been compensated for the cost of moving and therefore is not entitled to additional costs that she chose to incur. Accordingly her claim for the airfare of her daughter is dismissed.

7. Purchase of medication - \$80.00

8. Purchase of kitchen items - \$56.37

The tenant provided receipts for the purchase of these items. However, the tenant would have had to purchase her medication anyways and has the kitchen items in her possession. Therefore the tenant's claims for these items are dismissed.

9. Pain and suffering - \$5,000.00

The tenant has been compensated for all the extra costs that she incurred due to a breach of the tenancy agreement on the part of the landlord.

However, I also find that the tenant endured pain and suffering when she had to move out of her own home and was unable to move into the rental unit, ten days after the tenancy was due to start. The tenant also had to look for another place to rent and due to seasonal rental trends and her disability, finding another place immediately was a challenging task for the tenant.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

In determining the amount of compensation, I take into consideration the seriousness of the situation and the length of time over which the situation has existed. In this case, the tenant endured this inconvenience for about six weeks before she found suitable alternative accommodation. Based on the monthly rent, I find it appropriate to award the tenant \$2,250.00 as compensation for her pain and suffering.

10. Filing fee - \$100.00

The tenant has proven most of her claim and therefore I award her the recovery of the filing fee.

The tenant has established a claim as follows:

1.	Mailing costs	\$0.00
2.	Moving items out of storage	\$780.00
3.	Cost of storage	\$758.88
4.	Hotel stay for January 09, 2016	\$113.85
5.	Hotel stay January 11 to February 16, 2016	\$2,194.47
6.	Cost of airfare of helper	\$0.00
7.	Purchase of medication	\$0.00
8.	Purchase of kitchen items	\$0.00
9.	Pain and suffering	\$2,250.00
10	Filing Fee	\$100.00
	Total	\$6,197.20

The tenant has established a claim for \$6,197.20. The tenant has already received \$200.00 on January 03, 2016. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance of \$5,997.20. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$5,997.20**.

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 24, 2016

Residential Tenancy Branch