



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) by the tenant under the *Residential Tenancy Act* (the “Act”) for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and for the return of her security deposit.

On May 6, 2016, the hearing began and after 78 minutes was adjourned to allow for additional time to hear the evidence of the parties. An Interim Decision was issued dated May 6, 2016 which should be read in conjunction with this Decision. On June 9, 2016, the hearing reconvened and after 140 minutes was adjourned to allow for additional time to hear the evidence of the parties. A second Interim Decision was issued which was dated June 9, 2016 which should be read in conjunction with this Decision. On August 17, 2016, the hearing reconvened and after 66 minutes was concluded.

Attending all of the dates of the hearing which were held by teleconference were the tenant, the support person for the tenant, the landlord, legal counsel for the landlord (the “counsel”), and the spouse of the landlord. Attending only the final date of the hearing was interpreter M.T. (the “interpreter”). The tenant, the landlord, the interpreter and the spouse of the landlord were affirmed. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

At the outset of the hearing the tenant stated that since she has now vacated the rental unit she was withdrawing the portion of her claim that related to a request for an order for the landlord to make emergency repairs for health or safety reasons and for an order for the landlord to make regular repairs to the unit, site or property. As this does not prejudice the landlord, the tenant's request is granted.

Also at the outset of the hearing, the tenant was advised that her request for the return of the security deposit was premature as she filed her Application on March 31, 2016 and did not vacate the rental unit until May 1, 2016. As a result, the tenant's request for the return of her security deposit is dismissed with leave to reapply. I note that this does not extend any applicable timelines under the *Act*.

In addition to the above, the tenant acknowledged during the hearing that her monetary claim as submitted contained an adding error and as a result, was reduced from \$12,705.00 as claimed to the correct amount of \$10,805.00. As a reduction of the tenant's monetary claim does not prejudice the tenant, the tenant was permitted to continue with her claim for the reduced amount of \$10,805.00.

I note that legal counsel requested to have this matter scheduled with the landlord's separate application which was denied as the landlord filed his application after the tenant's hearing had already commenced.

Issue to be Decided

- Is the tenant entitled to monetary compensation under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on March 1, 2015 and reverted to a month to month tenancy agreement after February 29, 2015. Monthly rent was \$1,600.00 per month and was due on the first day of each month.

The tenant's reduced monetary claim of \$10,805.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleanup labour (17 hours @ \$25.00 per hour)	\$425.00
2. Area rug	\$100.00
3. Laundry basket	\$30.00
4. Boots X 4 @ \$50.00 each	\$200.00
5. Jackets and clothes (not washable, name brands, stained)	\$1,000.00
6. Coffee table	\$150.00
7. End table	\$100.00
8. Couches X 2 @ \$500.00 each	\$1,000.00
9. Reimbursement of rent for 4 months (\$1,600.00 per month X 4)	\$6,400.00
10. A – Moving expenses (deposit and gas) for 2	A- \$400.00

roommates (2 roommates @ \$200.00) B – Moving expenses (4 bedrooms, deposit & gas)	B- \$500.00
11. Hydro leaking tape and reimbursement 1 year	\$500.00
TOTAL	\$10,805.00

Settlement Agreement

During the hearing, the parties agreed to a mutually settled agreement on the following items:

Item 1 – The landlord will compensate the tenant the amount of \$425.00

Item 3 – The landlord will compensate the tenant the amount of \$30.00

Item 11 – The landlord will compensate the tenant the amount of \$350.00

This settlement agreement was reached in accordance with section 63 of the *Residential Tenancy Act*. As a result, items 1, 3 and 11 will be accounted for later in this Decision based on the mutually settled agreement of the parties.

Evidence Related to Remaining Items

Regarding items 2, 4, 5, 6, 7, and 8, the tenant has claimed a total of \$2,550.00 for the loss of her personal items (the “personal items”) due to water damage caused by flooding in the rental unit on more than one occasion. The tenant confirmed that she did not have tenant insurance at the time of the flooding and stated that her tenant’s insurance expired one month before the flooding occurred. The tenant stated that she allowed her tenant insurance to lapse due to financial reasons.

For the tenant’s personal items, both parties referred to many colour photos submitted in evidence. The tenant did not provide receipts for her personal items. As a result of the tenant permitting her tenant insurance to expire, the tenant’s claims for items 2, 4, 5, 6, 7, and 8 were dismissed during the hearing as the tenant breached section 7 of the *Act* by failing to minimize the loss as the landlord is not the tenant’s insurer.

Regarding item 9, the tenant is claiming 100% of the \$1,600.00 monthly rent for a period of four months totaling \$6,400.00. According to the tenant the rental unit was uninhabitable since December 5, 2015, which the landlord vehemently disputed. The tenant stated that there were a total of three floods with the first being on December 5, 2015. The rental unit is made of up two storeys and the flooding was limited to the lower floor only. The upper floor of the rental unit included the living room, kitchen, bathroom, three bedrooms, dining area and ensuite bathroom. The lower floor of the rental unit included the laundry room, bathroom, 2 carpeted bedrooms, storage space/hallway, entryway and rec room the latter of which was used as the tenant’s daughter’s bedroom.

There is no dispute that the tenant was offered alternate accommodation on March 13, 2016 which the tenant refused as the tenant stated it was not near her children's school and that her children walked to school. In addition, the tenant claims that the alternate accommodation did not have a yard for her dog, which the landlord disputed by stating that the yard was "really big". The landlord suggested that the tenant could have driven her children to school and that the alternate accommodation was only five minutes away by car. The tenant stated that the alternate accommodation was a 47 minute walk away from the rental unit.

The parties provided their respective versions of the photos submitted in evidence and discussed the dates of the three floods, the first of which occurred in December 2015 and the last two which occurred in March of 2016. The landlord stated that the cause of the flooding was a root blocking a perimeter drain which could only be repaired when there was dry weather and could not be repaired during the rainy months. The landlord submitted an invoice dated December 11, 2015 from a plumbing, sewer and draining service company that reads in part:

"...INSPECTED PERIMETER, FOUND MULTIPLE ISSUES NEED TO DIG AND
INSTALL [illegible] ON FRONT LEFT CORNER, AS WELL AS REMOVE D/S [illegible]
AND CLEAR DEBRIS..."

[reproduced as written]

The parties disputed how responsive the landlord was at responding to the tenant's concerns during the flooding incidents. The landlord confirmed that the flooding in March 2016 was worse than the flooding in December 2015. There were no reports submitted that supported that the digging referred to above could not be completed during the tenancy. As of the June 9, 2016 reconvened hearing date, the landlord confirmed that the perimeter drain had still not been completed which was over one month after the tenancy had ended and was not completed based on the landlord's own testimony until August 2, 2016, the latter information of which was provided during the August 17, 2016 reconvened hearing date.

Regarding item 10A, the tenant has claimed \$400.00 for moving expenses for her two roommates due to the flooding. The tenant did not submit receipts in evidence to support this portion of her claim. The tenant testified that her boyfriend moved her roommates in a truck and confirmed there was no gas receipts submitted in evidence either. The tenant also stated that a portion of the \$400.00 is for the security deposit in the new residence.

Regarding item 10B, the tenant has claimed \$500.00 for moving expenses for herself and her children. The tenant testified that she is relying on the same evidence for 10B that is presented for 10A which is described above.

The landlord through his counsel confirmed that the landlord does not agree with any portion of the tenant's application other than what the parties reached a mutually settled agreement on which is described above.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Items 1, 3 and 11- As indicated above, these items were resolved by way of a mutually settled agreement which is binding on the parties. The amounts agreed upon to be paid by the landlord to the tenant are as follows:

Item 1 – The landlord will compensate the tenant the amount of \$425.00

Item 3 – The landlord will compensate the tenant the amount of \$30.00

Item 11 – The landlord will compensate the tenant the amount of \$350.00

Items 2, 4, 5, 6, 7, and 8 – For these items, the tenant has claimed a total of \$2,550.00 for the loss of her personal items due to water damage caused by flooding in the rental unit on three occasions. As mentioned above, as the tenant confirmed that she did not have tenant insurance at the time of the flooding I find the tenant breached section 7 of the *Act* by failing to minimize the loss and that the landlord is not the tenant's insurer. Therefore, items 2, 4, 5, 6, 7, and are **dismissed without leave to reapply.**

Item 9 - The tenant is claiming 100% of the \$1,600.00 monthly rent for a period of four months totaling \$6,400.00. According to the tenant the rental unit was uninhabitable since December 5, 2015, which the landlord vehemently disputed. The tenant stated that there were a total of three floods with the first being on December 5, 2015. As there is no dispute that the tenant was offered alternate accommodation on March 13, 2016 which the tenant refused I find the tenant failed to minimize the loss by rejecting the landlord's offer for alternate accommodation. Therefore, I find the tenant is entitled to no compensation from the landlord between March 13, 2016, the date of the offer for alternate accommodation and the end of tenancy date which was May 1, 2016.

I will now consider whether the tenant is entitled to any compensation between the dates of December 5, 2015, the date of the first flood and March 12, 2016, the day before the offer was made by the landlord for alternate accommodation. Firstly, as the rental unit is two storeys and the flooding was limited to the lower floor only, I find the tenant has failed to prove part three of the test for damages or loss as the tenant has claimed 100% of the reimbursement of rent. I find the evidence before me does not support that the tenant had no use of the rental unit and was not "uninhabitable" as the tenant claims. Firstly, the fact that the tenant remained in the rental unit between December 6, 2016 and May 1, 2016 supports that it was habitable as the tenant and her family lived there without taking the landlord's offer of alternate accommodation presented to the tenant on March 13, 2016. Secondly, the flooding was limited to the lower floor only and did not impact the upper floor of the rental unit. Based on the above, I find the tenant's claim for 100% compensation fails due to insufficient evidence.

I do; however, find that the landlord did not respond to the flooding incidents in a thorough and timely manner. For example, within three months of December 2015, two additional floods occurred in the rental unit and I find the landlord's response to the first flood to be insufficient. I based my finding primarily on the December 11, 2015 invoice submitted by the landlord which was described above and without any further documentation to support that the "several issues" were repaired in a timely manner and that the digging recommended could not be done in a more timely manner and took the landlord until August 2, 2016 to finally repair the perimeter drain which I find to be an unreasonable amount of time to respond to a perimeter drain problem which falls under the category of emergency repair under the *Act*. Residential Tenancy Branch Policy Guideline 6 Right to Quiet Enjoyment states that:

"...It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations..."

[reproduced as written]

Based on the above, while I find that the tenant failed to prove her claim of 100% loss of use of the rental unit due to flooding, I do find the tenant suffered a loss of use of some of the lower

portion of the rental unit between December 5, 2016 to March 13, 2016, the latter date of which was the date the landlord was offered alternate accommodation. As a result, I award the tenant a nominal amount for the months of December 2015, January 2016, February 2016 and March 1-12, 2016 calculated as follows:

1. December 2015	\$200.00 nominal amount
2. January 2016	\$200.00 nominal amount
3. February 2016	\$200.00 nominal amount
4. March 1-12, 2016	\$100.00 nominal amount
TOTAL	\$700.00 nominal amount for item 9

The amounts described above were based on the monthly rent and using an estimate of the use of the lower floor and based on the upper floor containing the kitchen, living room, dining area and more bedrooms than the lower floor, and taking into account the fact the exact square footage of the lower floor and upper floor of the rental unit was not submitted in evidence by either party.

Regarding item 10A, the tenant has claimed \$400.00 for moving expenses for her two roommates due to the flooding. This item is dismissed in full as roommates have no rights or obligations under the *Act*.

Regarding item 10B, the tenant has claimed \$500.00 for moving expenses for herself and her children due to the flooding, which is dismissed in full as the tenant permitted her tenant's insurance which I find is a breach of section 7 of the *Act* by failing to minimize the loss as the landlord is not the tenant's insurer.

I find the tenant has established a total monetary claim in the amount of \$1,505.00 comprised of \$805.00 reach via a mutually settled agreement for items 1, 3 and 11, and \$700.00 granted for item 9. I grant the tenant a monetary order pursuant to section 67 of the *Act*, in the amount of **\$1,505.00** owing by the landlord to the tenant.

Conclusion

I order the parties to comply with the terms of their settlement agreement described above.

The tenant's application was partially successful.

The tenant has established a monetary claim in the amount of \$1,505.00 comprised of \$805.00 reach via a mutually settled agreement for items 1, 3 and 11, and \$700.00 granted for item 9. I grant the tenant a monetary order pursuant to section 67 of the *Act*, in the amount of \$1,505.00 owing by the landlord to the tenant. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, 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: September 2, 2016

Residential Tenancy Branch