



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 for Dispute Resolution by the tenant for a monetary order for money owed or compensation under the *Act*, and to recover the filing fee from the landlord.

This matter commenced on August 29, 2016, and was adjourned to November 16, 2016. An interim decision was made which should be read in conjunction with this decision.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to a monetary order for money owed or damages under the *Act*?
Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

The tenancy began on May 1, 2016. Rent in the amount of \$975.00 was payable on the first of each month. The tenancy ended on July 31, 2016. The tenancy ended based on an undisputed 1 Month Notice to End Tenancy for Cause, effective July 31, 2016.

The tenants claim as follows:

a.	Moving expenses	\$ 600.00
b.	Lost wages and loss tips	\$ 1,133.00
c.	Return of rent	\$ 1,575.00
d.	Courier and USB stick	\$ 57.33
e.	Filing fee	\$ 100.00
	Total claimed	\$ 3,465.33

Moving expenses

The tenant testified that they should be entitled to moving costs because it was a last minute move and they were unable to find a moving truck because it was a long weekend.

The landlord testified that the tenancy ended in accordance with the *Act*, and the tenant is not entitled to recover moving costs.

Loss wages and tips

The tenant submits in their application at they should be entitled to loss wages and tips. In support is a letter from the tenant's employer indicating the tenant has missed 4 days as of work due to the dispute.

The landlord testified they are not responsible for the tenant's wages.

Return of Rent

The tenant testified that they seek to recover \$300.00 per month for the three months they were residing in the rental unit for the following deficiency. All the drains were clogged and drained extremely slow. The kitchen cupboard hinge was broken. The seal on the freezer was not sealing properly and their food thawed. The closet door were the washer and dryer are located did not open fully and they were unable to use the appliances. The tenant stated the dishwasher did not work the entire time.

Filed in evidence are photographs of a dirty bathtub, a broken hinge on the lower portion of a cabinet, a cracked or scratched tile and small baseboard missing and of a freezer packed full with food.

The tenant testified that they should not be required to pay any rent for July 2016, as they were not consistently staying at the rental unit. The tenant stated that the landlord uttered threats and the police told them that it was unsafe for them to continuing residing there. The tenant seeks the return of July 2016, rent in the amount of \$975.00. Filed in evidence is a recording, which I have considered.

The landlord agreed that the dishwasher did not work the entire tenancy. The landlord stated that the tenant did notify them of a problem with the freezer; however, when they attended the freezer was working fine. The landlord stated that there was no issue with the kitchen drain. The landlord stated that the bathroom drain was clogged with hair which was repaired. The landlord stated the hinge was repaired. The landlord stated the washer and dryer are accessible.

The landlord testified that the tenant was given compensation in the amount of \$200.00 for some of the minor deficiencies at the start of the tenancy.

The tenant argued the \$200.00 was for cleaning cost at the start of the tenancy.

Courier and USB stick

The tenant submits that they should be allowed to recover courier fees and the cost of the USB stick submitted as evidence.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Moving expenses

In this case the tenancy ended based on a 1 Month Notice to End Tenancy for Cause. I find the tenant has failed to prove a violation of the *Act* by the landlord. Therefore, I find the tenant is not entitled to recover moving costs.

Loss wages and tips

The tenant is claiming for loss of wages; however, the tenant is not entitled to recover wages related to preparing or attending the hearing. Nor is the tenant entitled to recover loss of wages because of being evicted. Therefore, I dismiss this portion of the tenant's claim.

Return of Rent

In this case, I accept the tenant was without a dishwasher for the duration of their three-month tenancy; a dishwasher was included in rent. I find this devalued the tenancy. However, a dishwasher is simply a luxury item and dishes can be washed by hand in the sink. A dishwasher has less value than a stove or refrigerator or than the actual living space.

I find a reasonable amount for compensation for the loss of use of a dishwasher is 5% of the rent. The evidence of the landlord was that the tenant was given compensation at the start of the tenancy for the deficiencies. The evidence of the tenant was that it was for cleaning. I find both versions are probable; however, the burden of proof is on the tenant.

I find the tenant was adequately compensated for the month of May 2016 for the loss of use of dishwasher. Therefore, I find the tenant is entitled to recover compensation for the loss of use for June and July 2016, in the amount of $\$48.75 \times 2 = \mathbf{\$97.50}$.

I am not satisfied that the missing baseboard, a hinge broken on the door, or crack tiled devalued the tenancy. They had no impact on the use of the living space. I find the tenant has failed to prove a loss exists. Therefore, I dismiss this portion of their claim.

I am not satisfied that the photograph of the bathtub support the drains were not working, as there is no water in the bathtub. The photograph simply shows a dirty bathtub. I find the tenant has failed to prove a violation of the *Act* by the landlord. Therefore, I dismiss this portion of their claim.

I do not accept the washer and dryer were inaccessible and unusable. The photograph filed by the tenant shows both appliances are front-loading and the handles to open those appliance are in the center of the doorway. While using the soap dispenser may have been challenging, soap can be added directly in to the machine. I find the tenant has failed to prove a violation of the *Act* by the landlord or a loss. Therefore, I dismiss this portion of their claim.

I do not accept the tenant's evidence that the food in the freezer thawed out and was unusable. That is not supported by the photograph as you can see ice around the upper edge of the door and it would be impossible for the food to be thawed when ice is still on the food. The photographs supports more likely than not the freezer door was not closing properly because it was over filled, as you can see items in the freezer door that are bulging out of the space. I find the tenant has failed to prove a violation of the *Act*. Therefore, I dismiss this portion of their claim.

I am not satisfied that the tenant is entitled to any return of rent for July 2016. The video recording is not threatening, it simply say that the tenant is not going to like what will happen if the tenant fails to vacate, as there was a notice to end tenancy. There were no yelling or threats of violence and in fact the landlord indicated that they might be agreeable to give the tenant more time to vacate. I find the tenant has failed to prove a violation of the *Act* by the landlord. Therefore, I dismiss this portion of their claim.

Courier and USB stick

Tenant seeks to recover the cost of courier fees and cost for preparing for the hearing. I find these costs are not recoverable under the *Act*. Therefore, I dismiss this portion of their claim.

I find that the tenant has established a total monetary claim of **\$97.50**. As the tenant was largely unsuccessful with their application, I decline to grant the tenant the recovery of the filing fee from the landlord. I grant the tenant an order under section 67 in the above amount.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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Conclusion

The tenant was largely unsuccessful with their application. The tenant is granted a monetary order in the above amount. The tenant is not entitled to recover the filing fee from the landlord.

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: December 2, 2016

Residential Tenancy Branch