



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC MNSD

Introduction

This hearing was convened in response to applications by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The application from the tenant requested:

- a Monetary Order for money owed or compensation for damage or loss under section 67 of the *Act*;
- a return of the security deposit pursuant to section 38 of the *Act*; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The tenant, and the landlord, participated in the conference call hearing. They were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was represented at the hearing by LW and DL.

On January 9, 2017, the tenant served the landlord’s agent, LW in person with the Tenant’s application for Dispute Resolution Package (“Tenant’s Application”) and evidentiary packages. The landlord acknowledged receiving this package. Pursuant to sections 88 and 89 of the *Act*, the landlord is found to have been served on January 9, 2017.

At the outset of the hearing the tenant asked to amend her Monetary Order from \$26,979.00 to \$25,000.00. Pursuant to section 64(3)(c) of the *Act*, I amend the tenant’s Monetary Order to reflect this new amount.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for loss or damage?

Is the tenant entitled to a return of the security deposit?

Can the tenant recover the filing fee from the landlord?

Background and Evidence

Testimony was provided by the tenant that this tenancy began on October 1, 2015 and ended on September 30, 2016. Rent was \$1,135.00 per month and a security deposit of \$535.00 was held by the landlord. On January 3, 2017 the landlord mailed the tenant a cheque for \$400.00 as compensation for the security deposit she paid at the outset of the tenancy.

The tenant is seeking a Monetary Order for \$25,000.00. She explained that during the course of her tenancy she suffered numerous traumas as a result of the landlord's negligence. Specifically, the tenant is seeking compensation for the following:

Item	Amount
BC Ambulance Service	\$80.00
Trinity Laser (estimate)	13,194 (+tax) to 21,990 (+tax)
Resulting illness as a result of heat being turned off	1,135.00
Loss of peace and ability to enjoy quiet and respect for 6 months	1,135.00
Ongoing negligence and inadequate maintenance	1,000.00
Charge from Landlord for Repairs	369.00 (+tax)
Return of Security Deposit (plus interest)	2,440.00
Reimbursement for Filing Fee	100.00
Total Monetary Award	\$25,000.00

During the course of the hearing the tenant provided detailed explanations for the Monetary Order she was seeking. The tenant explained that her rental unit was plagued with problems; however, her main concerns centered on three issues. The first being noisy neighbours, the second being injuries that she suffered as a result of the landlord's negligence and the third being a dirty/inadequate rental unit. In addition to these main concerns, the tenant also expressed frustration with her security deposit being held by the landlord and a general loss of quiet enjoyment.

The tenant testified that she has not been returned her security deposit of \$535.00. The landlord provided oral testimony that a cheque for \$400.00 was issued and mailed to

the tenant on January 3, 2017. The landlord explained that the delay in the issuance of a cheque was the result of the tenant not providing her forwarding address to the landlord. The tenant denied receiving a cheque despite the landlord providing a reference number for the cheque that was issued to the tenant.

Many of the tenant's monetary claims centre on the trauma that the tenant suffered as a result of loud music being played in the building. The tenant explained that on several occasions she was disturbed by a neighbouring unit who played music loudly. She said that she wrote to the landlord 7 to 10 times and spoke to the landlord in person 3 to 4 times in an effort to have her concerns addressed. On December 30, 2015 frustrated by the landlord's inaction, the tenant explained that she was forced to confront the neighbouring unit about their loud music, and that this event led to a confrontation that was very stressful for her.

The tenant continued by noting that she specifically moved into the rental as she was under the impression it was a quiet building. As a result of the anxiety and panic attacks she suffered from the noise originating in the neighbouring suite, the tenant called an ambulance 4 times starting on October 1, 2015.

Further monetary compensation is being sought by the tenant for broken cabinets, rotten doors and rotten boards that were present in the rental unit. Specifically, the tenant took issue with the fact that she did not have a bathroom door for 36 hours while the landlord was performing repairs on it. No loss was described by the tenant as having been suffered as a result of this door not being present. The landlord, by the tenant's admission took steps to repair the items that she had identified as needing attention and repairs. In addition, these deficiencies were present when the tenant took possession of the rental unit.

The final aspect of the tenant's application centers on her desire to recoup the money she was charged by the landlord to perform repair work that she requested be done on her suite. The tenant explained that her adult son had previously inspected the suite during the initial condition inspection and found the premises to be in suitable condition for occupancy; however, she argued that he did not appreciate what he was signing.

The landlord advised that this charge was a standard fee that is applied to all non-essential work. Specifically, the tenant requested that the cupboards be fixed, that the suite be cleaned and that the paint be touched up.

Analysis – Monetary Order

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. In this case, the onus is on the tenant to prove her entitlement to her claim for a monetary award.

As mentioned previously the tenant provided much testimony concerning the extent of her loss during the tenancy. The majority of her claim consisted of issues concerning negligence on the part of the landlord, and the landlord's failure to rectify situations she had brought to their attention. Section 67 *only* allows me to determine issues concerning damage or loss resulting from the tenancy; therefore many of the issues that the tenant has claimed monetary compensation are beyond my jurisdiction.

Specifically, the tenant provided insufficient evidence to that established that these injuries were caused by the negligence of the landlord. No medical evidence was provided connecting the necessity of these treatments with any of the landlord's actions. In addition, no proof was submitted linking the landlord's turning off the heat during the summer months, with the tenant's sickness.

The aspects of the tenant's application that are being dismissed include;

- The cost of an ambulance for \$80.00
- The estimate for the cost of laser treatment of \$13,194 (+tax) to \$21,990 (+tax)
- The cost of turning off the heat and resulting illness \$1,135.00

I will now turn my attention to the matters related directly to the tenancy.

Security Deposit:

I find the testimony of the landlord's representatives very compelling as they were able to provide not only a reference number but an exact date that the security deposit was returned. They explained that the tenant had lost her keys and electronic fob and the

replacement cost was deducted from the security deposit as per the terms of their tenancy agreement.

I dismiss the tenant's application for a return of the security deposit as the landlord had already returned the deposit to the tenant.

Loss of Quiet Enjoyment:

Section 28(b) of the *Act* states, *A tenant is entitled to quiet enjoyment including, but not limited to, rights to...freedom from unreasonable disturbance.* Policy Guideline #6 of the *Residential Tenancy Policy Guideline* expands on this noting;

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

The landlord stated that they spoke with the tenants each time they received a complaint. It is evident that the landlord took the concerns of the tenant seriously and made efforts to ensure that the tenants causing the noise were dealt with in a prompt and serious manner. As a result of the landlord's apparent swift actions, I am dismissing the tenant's claim for compensation due to loss of enjoyment.

Inadequate Maintenance:

The tenant is seeking compensation for broken cabinets, rotten doors and rotten boards that were present in the rental unit. Specifically, the tenant took issue with the fact that she did not have a bathroom door for 36 hours while the landlord was performing repairs on it. I find that 36 hours is a reasonable amount of time for a landlord to perform needed repairs. Furthermore, no loss was suffered as a result of this maintenance. The landlord, by the tenant's admission took steps to repair the items that she had identified as needing attention and repairs. In addition, these deficiencies were present when the tenant took possession of the rental unit. The tenant agreed to take possession of the rental unit following a condition inspection report. This report is discussed in detail in the following paragraph. The tenant's application for compensation as a result of inadequate maintenance is therefore dismissed.

Charge from Capreit:

While a condition inspection was performed at the start of the tenancy by the tenant's adult son, the tenant argued he did not appreciate what he was signing. There is insufficient evidence that the adult son lacked the authority to perform the condition inspection report on behalf of the Tenant. I find that the work performed was done solely at the tenant's request, to meet her wishes and was not work done to bring the premises into suitable condition for occupancy under either the tenancy agreement or the *Act*. The tenant's application for a return of the repair charges is dismissed.

As the tenant was unsuccessful in her application for a Monetary Order, she is not entitled to a return of the filing fee.

Conclusion

The tenant's application for a monetary order is dismissed.

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: March 22, 2017

Residential Tenancy Branch