



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

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

- a Monetary Order for loss of quiet enjoyment pursuant to section 67 of the *Act*; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant’s Application for Dispute Resolution (“Application for Dispute”) package and Monetary Order on approximately February 19, 2017. The tenant testified that she slid the Application for Dispute and the Monetary Order under the landlord’s door where she normally pays rent. While not a recognized form of service permitted under section 89 of the *Act*, the landlord stated that he received the packaged and was prepared to proceed with the hearing.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for loss of enjoyment of the rental unit?

Is the tenant entitled to a return of the Filing Fee?

Background and Evidence

Testimony was provided by both parties that this tenancy began on June 1, 2016. The tenant stated that she took possession of the rental unit June 2, 2016.

Rent was \$1,350 due on the first of the month. A security deposit of \$675.00 continues to be held by the landlord.

The tenant is seeking a Monetary Order for \$1,700.00 based on her loss of enjoyment of the rental property in addition to labour that she has put into the rental unit to bring it up to standards of cleanliness that she feels to be acceptable.

Specifically the tenant is seeking:

\$800.00 – Overpayment of Rent

\$300.00 – Cleaning done by herself (20 hrs @ \$15.00)

\$600.00 – Loss of Enjoyment for the presence of mice, cold bedroom, broken fridge and dirty stove.

The landlord maintains that the rental unit is old, built in approximately 1960 but that it is in, acceptable condition and he did not have complaints from the prior tenants.

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.

Overpayment of Rent.

The tenant maintained that she was due \$800.00 in rent that she had overpaid to the landlord. She bases her argument on the fact that a newspaper advertisement for a property lists a house for rent for \$1,250.00 not the \$1,350.00 she currently pays.

There are several issues with this claim, most notably the tenancy agreement supplied by the tenant herself that lists the rent she agreed to pay as being \$1,350.00. The tenant explained that she felt pressured to sign the lease as she had no other

accommodation at that time. While I sympathize with her anxiety in needing to make a decision on where to live, she seemingly entered into the agreement with the landlord under her own free will and I cannot input myself into any contract that she and the landlord concluded. Furthermore, the advertisement for a 3 bedroom home at \$1,250.00 per month does not contain the address of the rental unit in question; thereby making it impossible to confirm which property is being advertised.

I therefore decline to award the tenant any compensation for perceived overpayment of rent.

Labour.

Cleanliness is a very arbitrary concept and one which the tenant devoted a large amount of time speaking to. Evidence was provided to the hearing that the landlord paid for the rental of a carpet cleaner in response to the complaints of the tenant, that the carpets were not sufficiently clean. At the same time, the tenant and the landlord both testified that tenant withheld money from the rent as a way of compensation for cleaning she had done on the rental unit.

While I appreciate the fact that the tenant has testified that she has spent a large amount of time cleaning the apartment, the landlord did not ever agree to pay her for these efforts. In agreeing to pay for the rental of a carpet cleaner, the landlord has made concerted efforts to assist the tenant with her grievances surrounding the cleanliness of the property. The tenant withheld rent contrary to the *Act* and in doing so jeopardized her tenancy.

As the tenant withheld rent without authorization and the landlord took steps to mitigate the tenant's expenses associated with any cleanliness issues, I dismiss this aspect of the monetary claim.

Loss of Enjoyment.

Residential Tenancy Policy Guideline #6 – examines the factors to be considered when determining whether or not one's entitlement to quiet enjoyment has been breached.

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. *This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.*

The tenant stated that she has been unable to fully enjoy the rental property as there have been numerous mice in the property. She stated that they have eaten her toilet paper and soap and are a general nuisance with their droppings. The landlord acknowledged that mice are present in the rental unit; however, maintained that they only appeared after the tenant moved in. He said that the previous tenants did not have any issues with mice in the rental unit. The landlord testified that he has provided the tenant with traps in an attempt to mitigate the problem.

Furthermore, the tenant is seeking compensation for a cold bedroom, a dirty stove, a fridge that she described as having “wonky” electricity and containing missing pieces, as well as a towel rack that is “non-existent.”

Residential Tenancy Policy Guideline #40 provides guidance on the usual life of household items. It places both the stove and fridge as having a useful life of 15 years. The landlord testified that these items in question were bought new and are approximately 5 or 6 years old.

As no photographic evidence was presented to demonstrate the cleanliness of the stove and because the landlord testified that the stove was new and no complaints were received from the previous tenants, I cannot justify providing compensation for this loss. Evidence was however, provided to the hearing concerning some missing parts that the tenant purchased for the fridge and I am willing to compensate her for the loss of enjoyment associated with a broken fridge.

I do not find that the lack of a towel rack in a bathroom qualifies under section 67 of the *Act* as a claimant experiencing damage or loss resulting from a violation of the agreement or a contravention of the *Act*. Similarly, merely being cold is not a violation of the tenancy agreement of the *Act*. The tenant may be inconvenienced but she moved into a house that was built in the 1960s and which has previously been rented. The landlord stated that he has not received similar complaints from past renters.

The landlord has not provided the tenant with a professional exterminator, nor has the landlord taken adequate steps to repair the fridge that is damaged. It is not the tenant's responsibility to purchase items for a fridge that is broken. I find that the tenant is entitled to \$200.00 damage for loss of enjoyment of the rental unit. This figure reflects the time and effort she expended going to the hardware store to purchase items for the broken fridge as well as the inconvenience dealing with the mice without the assistance of professional exterminators. The tenant may withhold \$200.00 from future rent.

As the tenant was partially successful in her monetary claim, she is awarded \$50.00, half of her filing fee.

Conclusion

The tenant is awarded a Monetary Order of \$250.00. This amount may be withheld against a future rent payment.

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 9, 2017

Residential Tenancy Branch