



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, MNDC, MNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order to the landlord to make repairs to the rental unit pursuant to section 33;

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 tenant confirmed receipt of the landlords' documentary evidence. The tenants' only documentary evidence was a copy of the Notice to End Tenancy for Cause.

Preliminary Issue

At the outset of the hearing the parties advised that the tenant has moved out. The tenant advised that the only issue to be addressed in this hearing is her claim for a monetary order. As a result, I dismiss the tenants application save and except for the monetary claim and the recovery of the filing fee. The hearing proceeded and completed on that basis.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed for compensation for loss or damage under the Act, regulation or tenancy agreement?

Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenant gave the following testimony. The tenancy began on or about eight years ago. Rent in the amount of \$1970.00 is payable in advance on the first day of each month. At the outset of the tenancy, the tenant alleges that the landlord collected from the tenant a security deposit in

the amount of \$800.00 and a pet deposit of \$800.00. The tenant testified that in late November 2016 a “flood” occurred in the basement of the home. The tenant testified that the landlord responded quickly when he was notified.

The tenant testified that the landlord advised her that the damage would be repaired through his insurance company within 3 weeks. The tenant testified that it took 5 months to complete the repairs. The tenant testified that she incurred a higher than normal hydro bill because of the workmen using her electricity that she seeks compensation for. The tenant testified that the landlord did not fix her fridge in a timely manner and she seeks compensation for that as well. The tenant testified that she was without heat or hot water for a week as a result of the ongoing repairs. The tenant testified that she feels \$3000.00 is fair compensation to address these issues.

The landlord gave the following testimony. The landlord testified that he adamantly disputes the tenants’ claim that the repairs would be done in three weeks. The landlord testified that he never advised her of such and was very clear to her that this was going to be a long process. The landlord testified that the tenant was given 50% rent reduction for three and half months = \$3325.00 to compensate her for all matters. The landlord testified that he sent her a text message asking her if she was satisfied with the compensation and offered more, with no response from the tenant. The landlord testified that he advised her that he would cover any additional cost incurred by her including the hydro but was not provided any documentation or proof of costs.

The landlord testified that he purchased a new fridge for the tenant within three days of being notified by the tenant that a replacement was required. The landlord testified that it was the tenants’ refusal to allow access to the unit that caused an unnecessary delay. The landlord testified that the tenant has been more than fairly compensated and that she has not provided any documentation to prove her claim. In addition, the landlord testified that the deposit amounts as claimed by the tenant are incorrect and that the pet deposit was \$400.00. The landlord testified that there remains issues about unpaid rent and damage to the unit that need to be resolved.

Analysis

This was a very contentious hearing. The relationship between the two parties is an acrimonious one. Both parties yelled at each other and accused the other of lying. Both parties were cautioned about the behavior several times during the hearing. While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant’s claim and my findings around each are set out below.

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.** The applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord provided documentary evidence directly disputing the tenants claim; the tenant did not provide any documentation in regards to her monetary order. The tenant has failed to satisfy me that she has provided sufficient evidence to satisfy the four grounds listed above as required under section 67 of the *Act*. Based on the insufficient evidence before me, I must dismiss this application in its entirety.

Residential Tenancy Policy Guideline 17 states that an Arbitrator may address the issue of the security and pet deposit at the earliest opportunity. However, in the matter before me, the parties could not agree on the amount; neither party provided documentation to support their claim and as a result I am unable to address it. The issue of the security deposit and pet deposit can be addressed in a separate hearing if the parties are unable to resolve it.

Conclusion

The tenants' application is dismissed in its entirety.

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: June 26, 2017

Residential Tenancy Branch