



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC RR ERP AAT LRE O FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for compensation for damage or loss under the *Act* pursuant to section 67; a monetary order for the cost of emergency repairs pursuant to section 33; an order that the landlord make repairs to the rental unit pursuant to section 33; an order to allow the tenant(s) to reduce rent for repairs or services agreed upon but not provided, pursuant to section 65; an order to set conditions on the landlord's right to enter the rental unit pursuant to section 70; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

At the outset of this hearing, the tenant testified that she had vacated the rental unit and she withdrew all of her application but for her application for: a monetary order; an order to allow the tenant to reduce rent for repairs or services agreed upon but not provided and to recover the filing fee.

Preliminary Matter: Respondent's Evidence

Both parties attended the hearing and were given a full opportunity to be heard, to present their testimony, and to make submissions. The landlord acknowledged receipt of the tenant's Application for Dispute Resolution ("ADR"). The landlord acknowledged that she also received notice of another package (the tenant's evidence). While the landlord received the package, she testified she never opened the package. I find that the landlord was deemed served by the tenant with her ADR and evidence in accordance with section 89 and 90 of the Act on May 24, 2017.

The landlord testified that, coincidentally, she called in to the Residential Tenancy Branch to see if the tenant had made a claim on her security deposit. She testified she had not received a forwarding address from the tenant. She testified that her call led to

her discovery of the upcoming hearing. She also testified that, because she never opened the tenant's evidentiary materials, she was not aware of the tenant's forwarding address and so had no address for the tenant. The landlord testified that these are the reasons she failed to serve a copy of her evidence package to the tenant in advance of this hearing.

The Residential Tenancy Branch Dispute Resolution Rules of Procedure outline the requirements in submitting evidence to ensure that it is admissible at the hearing;

3.15 ... In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing. ...

3.16 ... At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

The landlord did not serve or attempt to serve her evidence to the applicant/tenant. The landlord had access to the tenant's address from at least one source but decided not to open her registered mail from the tenant. I find that she effectively refused the materials and was deemed served nonetheless. The landlord had the tenant's mailing information at hand but chose not to review the materials and ultimately decided not to serve her documents to the tenant.

Evidence to be relied on in a hearing must be served to the other party in advance of the hearing date in order to ensure a fair hearing process. The landlord did not serve her evidence to the tenant, although she had the means to do so. I find the landlord's decision not to open her mail is an insufficient reason for failure to serve the tenant in accordance with the Act. Therefore, I exclude the landlord's evidence package submitted for this hearing: I will not consider the evidence at this hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for loss under the *Act* including but not limited to a rent reduction for repairs not provided by the landlord?
Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on June 1, 2015 as a one year fixed term tenancy reverting to a month to month tenancy after one year. The rental amount of \$1100.00 was payable on the 1st of each month. The landlord continues to hold a \$550.00 security deposit and a \$150.00 pet damage deposit paid by the tenant at the outset of the tenancy. The tenant sought a monetary order in the amount of \$5345.47 from the landlord for repairs requested and not completed by the landlord during the tenancy.

The tenant claimed that she reported a variety of necessary repairs to the landlord and that the landlord did not attend to the repairs. These repairs included; a water leak starting on April 13, 2017 and resulting water damage. The tenant submitted text message correspondence from the tenant to the landlord on April 13, 2017 stating,

Check whatever you have running upstairs (washing machine?) right now as there is water coming thru the ceiling at both the door jam of the main bedroom and the kitchen hall door. Woke me up hearing all the water running and driving all over the floor.

...

Ok I went upstairs... your house is FLOODED... sink running upstairs bathroom upstairs bathroom flooded family flooded den flooded...

There is water everywhere ...

Further correspondence from the tenant to the landlord a week later,

I haven't heard anything from you since the water leak last week...

The tenant testified that she provided notice that she would end the tenancy and provided her new forwarding address on May 8, 2017. The tenant vacated the rental unit on June 3, 2017. She testified she vacated the rental unit because the landlord never addressed repairs in the unit and she was concerned that the landlord was entering her unit, disturbing her dog. The tenant claimed that the landlord entered her rental unit without her permission when the tenant was not home on more than one occasion. She testified that, on one occasion, the landlord locked her dog in a bedroom where it did not have access to food (or water) for the day. She testified that her dog

has been acting differently ever since that day and has separation anxiety as a result of the incident.

With respect to unaddressed repairs, the tenant testified that the hot water tank was not functional for approximately a month from April 29, 2017. The tenant claimed that her dining room table was damaged, that the table was an antique therefore taking \$2935.00 to repair the damage on the table. The landlord denied responsibility for damage to the table, denied that the hot water tank was broken and claimed she never entered the tenant's rental unit.

The tenant testified that she underwent a great deal of stress as a result of the lack of repairs in her unit, the landlord's unapproved entry into her unit and the multitude of repair and maintenance issues she had to address with the landlord. She testified that she took time off work as a result of the stress she endured during this tenancy. She did not provide a note from work or a doctor's note but indicated that she could do so if it was required. She submitted text message correspondence confronting the landlord about entering her rental unit. She submitted a copy of text message correspondence with the landlord stating that she believed the landlord was in the unit and locked her dog up in the bedroom. She requested \$352.20 for two missed work days at \$176.10 per day. She sought \$224.00 for four training sessions to assist with the dog's trauma.

The landlord initially denied entering the tenant's rental unit. The landlord then testified that she only went into the unit when a repair person or real estate agent required access. She testified that she always knocked first when she attended the rental unit. The landlord testified the "leak" in the rental unit was not actually a leak but just condensation build-up. The tenant submitted photographs showing walls where water had run down and stained. Her photographs also included a very dated hot water tank.

The tenant argued that her table was damaged by the landlord. The landlord denied that she damaged the table. The tenant submitted an email quote, based on photographs of the table sent to a repair person, estimating \$1245.00 to repair the table and additional costs for the accompanying chairs and hutch. The tenant testified that the table set was an antique. She also submitted a photograph of the table which appears to have some type of marks on one corner. The tenant also submitted text messages from the landlord asking when she can 'check' the tenant's table.

The tenant testified that the power was also out from February 9, 2017 at 12.00 pm until February 10, 2017 at 2.00 pm as the landlord failed to pay the electric bill. The landlord acknowledged that the electricity bill was unpaid in February 2017 and that, because of

her error, she reduced the tenant's rent by \$30.00 on that particular month. The landlord also testified that she worked to resolve the electricity issue as quickly as possible. The tenant confirmed that her rent had been reduced with her agreement but that now, she feels she is entitled to more than \$30.00 for the power outage. She testified that she attempted to resolve the issue as quickly as possible. The tenant sought an additional \$80.00 for the lack of power (light and heat as well).

The tenant testified that the laundry facilities were out of service for approximately two weeks and that, as a result she spent \$13.50 at a laundromat. She testified that the laundromat price was \$1.75 per wash or dry. The tenant also sought to recover her moving costs as she testified that she did not expect to move. She submitted an estimate for \$506.46 for her move. The tenant did not submit a paid invoice for the move.

Analysis

When a landlord and tenant enter into a tenancy agreement, written or verbal, each is expected to meet their responsibilities under the *Act*; a tenant is expected to pay rent; a landlord is expected to provide the premises as agreed to. If a tenant is deprived of the use of all or part of the premises, the tenant may be entitled to damages. The types of damages an arbitrator may award are; out of pocket expenditures if proved at the hearing in accordance with section 67 of the *Act*; an amount reflecting a general loss where it is not possible to place an actual value on the loss; "nominal damages" where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right; and finally aggravated damages for significant infractions by the landlord to the tenant.

In this case, the tenant has proven that the landlords failed to honour the residential tenancy agreement and meet her obligations under the *Act*. I note that the landlord testified that there were some provisions of the *Act* she was not familiar with however the landlord is required to know her legislated obligations. I accept the testimony of the tenant that the landlord accessed her rental unit on at least one occasion. I accept the testimony of the tenant that there were no laundry services available to the rental unit for two weeks of her tenancy. I accept the testimony of the tenant that there was a water leak from the landlord's unit to her rental unit causing damage to the unit itself and problems that the tenant had to address on her own as the landlord did not address the matters in a timely fashion. Based on both parties testimony over the course of the hearing, some admissions by the landlord and evidence from the tenant included, I find

that the landlord did not always maintain the services in the rental unit including electricity, hot water, and a water leak from the landlord's unit.

The landlord argued that the tenant's claims that she has suffered loss were unfounded and exaggerated. While her testimony did not always reflect a landlord who is timely in addressing repair issues, the landlord argued at the end of her testimony that she always addresses repairs or requests "as soon as possible".

The tenant sought \$2935.00 to repair an older dining room table. She testified the table was antique but I find she provided insufficient evidence to show that the table was an antique with higher value than another dining room table. I acknowledge that the tenant testified that the table had sentimental family value. I find that the photographs submitted are insufficient to show damage to the table. Further, I have no photograph of the condition of the table *prior* to its time in this rental unit. I find that the tenant has provided insufficient evidence to show that the table is damaged and that the landlord is responsible for damage to her table. Therefore, the tenant is not entitled to recover a cost for any table repair.

The tenant did not provide a note from work or a doctor's note to prove that she took time off work, that she was off work for stress related reasons and that the landlord or the tenancy were the sole source of her stress. Given that the tenant has not provided sufficient evidence, I find that she is not entitled to recover an amount for loss of work from the landlord. As there is insufficient proof of a connection between the landlord's actions and the dog's trauma, I find that the tenant is not entitled to an amount to provide further training for her dog.

I note that, in both of the above cases, I have indicated that there is insufficient evidence to prove the tenant's claim. 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.

The tenant testified that the power was out from February 9, 2017 at 12.00 pm until February 10, 2017 at 2.00 pm. The tenant confirmed that she agreed to accept \$30.00 in a rent reduction from the landlord. I find that this matter has been addressed between

the parties and I cannot revisit the agreement to determine whether it was equitable in the circumstances. Therefore, I find that the tenant is not entitled to any additional compensation from the landlord with respect to the power outage.

With respect to the tenant's moving, I note that her documentary evidence provides merely a quote or estimate \$506.46 for her move but not an actual cost. Moving is an inevitability and therefore, given the lack of proof that the tenant incurred an extraordinary cost and given that, at some point, she would have been required to move in any event, I find that the landlord is not responsible for the tenant's moving costs.

I accept the testimony of the tenant that the laundry facilities were unusable for approximately two weeks. Therefore, while the tenant does not have receipts, I find she is entitled to the reasonable amount requested for the tenant's laundromat visits necessitated by the lack of laundry facilities in the rental premises, I find the tenant is entitled to her laundry costs of \$13.50.

I accept the testimony, supported by the tenant's photographic and documentary evidence including text messages that the landlord's upstairs unit flooded and the landlord took some time to address the issue causing inconvenience and undue stress to the tenant. Generally, while I find that while the tenant has been unable to prove specific losses to be financially compensated, I also find that the landlord failed to meet her obligations as a landlord at times. Given that I have found the tenant has had resulting general damage and impact on herself as a result of the landlord's inaction with respect to the leak; the hot water tank; and the laundry among other services mentioned by the tenant, I find that the tenant is entitled to a nominal amount of damages – damages that are applicable where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. As a response to the landlord's failure to meet her obligations to the tenant, I find that the tenant is entitled to \$150.00.

Based on all of the evidence and testimony at this hearing, I find that the tenant is entitled to compensation pursuant to section 67 of the Act totalling \$163.50 as a nominal award and the additional laundry costs. As the tenant was successful in her application, I find that the tenant is entitled to recover the \$100.00 filing fee.

Conclusion

I grant a monetary order to the tenant in the amount of \$263.50.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: July 14, 2017

Residential Tenancy Branch