



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

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, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on April 6, 2017. The landlord's agent (the landlord) stated that the tenant was served with the landlord's submitted documentary evidence via Canada Post Registered Mail on July 2, 2017. The tenant stated that he was unsure on whether or not he did receive the landlord's documentary evidence. The landlord provided in her direct testimony the Canada Post Customer Receipt Tracking number as confirmation. As the tenant cannot dispute the landlord's claim and the landlord has provided in her direct testimony the Canada Post Customer Receipt Tracking number (noted on the cover page of decision) as confirmation, I find on a balance of probabilities that the tenant was properly served and is deemed sufficiently served 5 days later on July 7, 2017 as per section 90 of the Act. I also find based upon the undisputed affirmed testimony of both parties that both parties have been properly served with the notice of hearing package and the tenant's submitted documentary evidence as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 1, 2016 on a fixed term tenancy ending on March 31, 2017 as per the submitted copy of the signed tenancy agreement dated March 10, 2016. The monthly rent was \$1,000.00 payable on the 1st day of each month. A security deposit of \$500.00 was paid.

The tenant seeks a monetary claim of \$1,500.00 which consists of:

\$306.00	Legal Consultation
\$55.60	Mail Forwarding Cost (Canada Post)
\$60.90	Renewal of Mail Forwarding Cost (Canada Post)
\$571.72	Moving Costs (from temporary tenancy to new landlord)
\$505.77	Compensation, General Time, Hardship and Stress

The tenant claims that after entering into a signed tenancy agreement which was to begin on April 1, 2016 the tenant was informed by the landlord that the existing tenant had refused to vacate the rental unit. The tenant was offered and accepted a temporary rental until the existing (over holding) tenant had vacated. The tenant claims that he consulted a lawyer on litigation with the landlord; paid to have his mail temporary forwarded while he was waiting to his agreed tenancy unit; paid to renew the temporary mail forwarding; paid for moving costs to new landlord as the old landlord was unable to provide agreed rental unit and compensation for time, stress and hardship as a result of the over holding tenant. The tenant also claims that he suffered the loss of use of a dishwasher as it was not provided in his temporary tenancy.

The tenant has submitted in support of this claim:

- A copy of signed tenancy agreement dated March 10, 2016
- A copy of condition inspection report dated April 1, 2016 for temporary tenancy
- A copy of Canada Post Mail Forwarding Receipt dated April 12, 2016
- A copy of Canada Post Mail Forwarding Renewal for \$60.90
- A copy of Canada Post Renewal Notice for Mail Forwarding (for June 2016)
- A copy of letter from tenant to landlord requesting tenancy information on over holding tenant and notification to landlord to end existing tenancy agreement

A copy of letter from landlord to tenant dated July 11, 2016, re: suite transfer and options provided by landlord

A copy of moving invoice dated November 30, 2016 to new landlord

The landlord conceded the tenant's claim for mail forwarding costs of \$55.60. The landlord disputes the tenant's renewal costs for mail forwarding as the tenant was notified that mail could be forwarded to his temporary rental unit address. The landlord disputes the tenant's claim for moving costs as the over holding tenant had not successfully vacated until June 29, 2017 and that the tenant had decided to move to a different tenancy with a new landlord. The landlord claims that this is a cost that the tenant would have suffered the cost in any event in ending the tenancy. The landlord also disputes the tenant's claim for compensation for time, stress and hardship as the landlord kept the tenant informed of the over-holding tenant's status. The landlord provided undisputed evidence that providing a dishwasher was not a term of the tenancy and that the tenant has not suffered a loss as per the signed tenancy agreement.

Analysis

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.

Section 72 of the *Act* addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the *Act* does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the tenant's claim for recovery of litigation costs (legal consultation) is dismissed.

In this case, I accept the undisputed affirmed testimony of both parties and find that the tenant has established a claim for \$55.60 for mail forwarding costs as this was conceded by the landlord's agent. On the tenant's remaining items of claim, I find that the tenant has failed. The landlord provided undisputed affirmed evidence that the tenant was notified of the temporary address and that he could have used this as his mailing address without incurring an additional cost. The tenant instead chose to incur

the expense without trying to mitigate this cost. This tenancy ended as a result of the tenant choosing to end the signed tenancy agreement and moving to a new tenancy with a new landlord. As a result, I find that this is a cost that the tenant would have incurred when the tenancy ended and that the landlord is not responsible for, had the tenant incurred a cost in moving to the originally promised rental unit and continued the tenancy the landlord would have been responsible for this expense. The tenant has provided no basis on which this portion of the claim is made other than to state that he was promised as part of his tenancy a dishwasher and had suffered the loss of this use. The landlord provided undisputed evidence that at no time was a dishwasher promised as a term of the tenancy. A review of the tenancy agreement does not provide for a dishwasher. I also note that the tenant had stated that this was an arbitrary amount not based upon any actual losses. As a result the tenant has failed to provide sufficient evidence of a basis for this portion of the claim.

The tenant has established a total monetary claim of \$55.60.

Conclusion

The tenant is granted a monetary order for \$55.60.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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: August 31, 2017

Residential Tenancy Branch