



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, FF

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of the security deposit, pursuant to section 38 of the *Act*;
- an Order that the landlord comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the 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 affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the second applicant listed on the application for dispute resolution is a tenant under a separate tenancy agreement who occupied the same rental building. The tenant confirmed that she does not represent the other listed applicant. The tenant was not able to adequately explain why a party who is not a co-tenant under the tenancy agreement should be a party to the proceeding. The parties testified that any claim that the second applicant may have against the landlord is unrelated to the present application arising from this tenancy. Pursuant to Rule of Procedure 2.3, claims made in an application must be related to each other. I find that the inclusion of a second applicant who is not a party to the tenancy, and whose claim, if any, is not included in the application for dispute resolution is contrary to the Rules of Procedure. Consequently, I remove the second applicant from this application. The second applicant is at liberty to file a separate application for dispute resolution regarding his own tenancy if he chooses.

As both parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution and evidentiary materials. The landlord confirmed receipt of the tenant's materials. In accordance with sections 88 and 89 of

the *Act*, I find that the landlord was duly served with copies of the tenant's application and evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to a monetary award for the value of the security deposit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties agree that there is little documentary evidence regarding this tenancy. No written tenancy agreement was prepared. The tenancy began in either December, 2016 or January, 2017. The monthly rent is \$1,250.00. The tenant paid a security deposit of \$625.00 which is still held by the landlord.

The tenant testified that the tenancy ended in July, 2017. The electricity to the rental building was shut off on July 12, 2017 and the tenant said that she immediately moved out of the unit. The tenant said that as a result of the lack of power she incurred costs for eating out, staying in a hotel and other losses. The tenant submitted into written evidence her receipts for the expenses she incurred.

The parties agreed that in February, 2017 the landlord accidentally broke the windshield of the tenant's vehicle while on the rental property. The landlord agreed at that time to get it fixed. The tenant submitted into written evidence a copy of the note written by the landlord to the tenant. The tenant said that the landlord did not arrange for the windshield to be fixed for some time and the tenant made arrangements herself to have it fixed in June, 2017. The tenant submitted into written evidence a copy of the invoice from the windshield glass company.

The tenant seeks to recover the monthly rent for July, 2017 as she vacated the rental unit. The tenant also applies to recover her security deposit of \$625.00. The tenant testified that she has not provided the landlord with a forwarding address in writing as of the date of the hearing.

The landlord said that he took reasonable steps to attempt to repair the power outage in the rental unit. The landlord said that the tenant in the other suite of the rental building was able to remain in the building during the outage.

The landlord testified that he entered into an agreement with the tenant's partner that they could take a sofa and love seat that was in the rental unit as compensation for their

inconvenience. The landlord said that the agreement was not recorded in writing but he believed all matters were resolved with the tenant. The tenant confirmed that she received a used sofa and love seat from the landlord but denies that there was any agreement that it was accepted as resolution for her monetary claim.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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 claimant also has a duty to take reasonable steps to mitigate their loss.

I find that there is insufficient evidence that the losses claimed by the tenant are attributable to a violation of the *Act*, regulations or tenancy agreement by the landlord. While I accept the testimony of the parties that the rental unit lost electricity in July, 2017, however I find there is insufficient evidence that this was a result of a violation by the landlord. The tenant argued that the electric services were terminated or restricted by the landlord. I find there is insufficient evidence in support of the tenant's argument. I find that the tenant has not established that the loss of power is a result of the landlord's violation.

I find there is insufficient evidence to show on a balance of probabilities that the cost of eating out, hotel stay and groceries are a result of the landlord's violation of the *Act*, regulations or tenancy agreement. I find that the tenant has not established that the costs she incurred are the result of a violation by the landlord. In addition to her claim for meals the tenant has submitted her grocery receipts which include items such as shaving gel, razors, and protein supplements. I find there to be insufficient evidence to show how the cost of these items are attributable to the landlord. Consequently, I dismiss this portion of the tenant's claim.

I accept the undisputed evidence of the parties that the tenant's vehicle's windshield was broken by the landlord. I accept the tenant's evidence that the cost of repairs was \$374.08. I issue a monetary award in that amount in the tenant's favour.

I do not find the landlord's evidence that there is an agreement settling all monetary claims with the tenant to be credible. The landlord testified that the agreement was not

recorded in writing and was made with the tenant's partner, someone who is not a party to this tenancy. The tenant said that she is unaware of any agreement, did not authorize her partner to act on her behalf in this matter and that the value of the furniture was never discussed. I accept the tenant's evidence that there is no agreement between the parties that the sofa and love seat were provided as a settlement of the tenant's monetary claim.

I find that the period that the rental unit was without power has resulted in a loss in the value of the tenancy for the tenant. Paragraph 65 (1)(f) of the *Act*, allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

I find that the loss of power has affected the tenant's ability to enjoy the rental unit to some degree. However, I find there is insufficient evidence to show that the tenancy was significantly affected. The tenant chose to move out and could not cook in the rental unit. The landlord gave undisputed evidence that the other tenant in the rental building was able to continue to reside in the building during the power outage.

I find that the rental unit was affected by the power outage but there is insufficient evidence that it was necessary to move out as the tenant did. I find that some of the loss was contributed to by the tenant who chose to stay in a hotel, eat out at restaurants and alter her daily life. Under these circumstances, I am issuing a monetary award of a nominal amount, which reflects that the tenant did suffer some loss in the value of her tenancy agreement. Based on the foregoing, I find that an appropriate amount of damages for the tenant's loss in the value of her tenancy is \$400.00, approximately a third of the monthly rent.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a).

The tenant testified that she has not provided the landlord with a forwarding address. The tenant said that the address for service on the tenant's application is the dispute address and not provided to the landlord as a forwarding address. I find that the tenant has not yet provided a forwarding address in writing to the landlord. Therefore, the

landlord's obligation under the *Act* to return the tenant's security deposit has not started. Once the tenant provides a forwarding address to the landlord in writing the landlord will then have 15 days to apply for dispute resolution or return the tenant's security deposit.

As the tenant's claim is not entirely successful I find that the tenant is not entitled to recover the filing fee for their application.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$774.08. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The portion of the tenant's application to recover the security deposit for this tenancy is dismissed with leave to reapply.

The balance of the tenant's application 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: October 2, 2017

Residential Tenancy Branch