



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF LRE MNDC OLC

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with the tenant's application for:

- a Monetary Order pursuant to section 67 of the *Act*;
- a cancellation of the Notice to End Tenancy for Cause pursuant to section 47 of the *Act*;
- an Order suspending or setting condition's on the landlords' right to enter the rental unit pursuant to section 70 of the *Act*;
- an Order for the landlords to comply with the *Act* pursuant to section 62; and
- recovery of the filing fee from the landlords pursuant to section 72 of the *Act*.

Both the tenant and the landlords attended the hearing. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant gave sworn testimony that an Application for Dispute Resolution was handed to the landlords in person on September 9, 2017. The landlords acknowledged receipt of this package. Pursuant to section 89 of the *Act* the landlords are found to have been served with the tenant's application for dispute.

The landlords gave sworn testimony that the tenant had been served in person with a 1 Month Notice to End Tenancy for Cause on August 9, 2017. The tenant acknowledged receipt of this notice. Pursuant to section 88 of the *Act*, I find that the tenant was duly served in accordance with the *Act*.

Following opening remarks, the tenant explained that he had vacated the rental unit on September 4, 2017 and was therefore no longer pursuing a cancellation of the landlords' notice to end tenancy, an Order pursuant to section 62 of the *Act*, or an Order suspending the landlords' right to enter the rental unit. In addition, the tenant and landlords both agreed that the security deposit had been returned to the tenant on September 16 & 21, 2017. The tenant said he wished to only pursue his monetary order pursuant to section 67 of the *Act* for \$95.83 and a

return of the filing fee. Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to reflect this change.

Issue(s) to be Decided

Is the tenant entitled to a monetary award?

Can the tenant recover the filing fee?

Background and Evidence

Testimony was presented at the hearing by the landlords that this tenancy began on April 1, 2017 and ended in September 2017. Rent was \$1,100.00 per month and a security deposit of \$575.00 collected at the outset of the tenancy was returned to tenant, K.A.W. in two parts. The first payment was made on September 16, 2017 and the second payment was made on September 21, 2017. The tenant acknowledged receipt of these funds and confirmed that the deposit was returned in its entirety, save for a deduction of \$47.00 to cover the cost of an outstanding hydro bill. The tenant said that he consented to this deduction.

The tenant explained that he was seeking a monetary order of \$95.83, plus a return of the filing fee. The tenant testified that he had vacated the rental unit on September 4, 2017 but had paid rent until September 9, 2017. The tenant therefore, wished for a return of the rental money he had paid in advance. The tenant said that it was his original intention to remain in the rental unit until September 9, 2017; however, ongoing disputes between his roommate and the landlords had created an unpleasant living situation, leading him to vacate the unit prior to his original intended move out date. Both the landlords and the tenant explained that K.A.W.'s roommate remained in the rental unit until September 20, 2017.

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. In this case, the onus is on the tenant to prove his entitlement to a monetary award.

The tenant sought a Monetary Order of \$95.83, plus a return of the filing fee. The tenant explained that he had paid for rent in September 2017, up to September 9, 2017 as it had been his intention to remain in occupation of the rental unit up to that date. Following continued

disagreements between the landlords and his roommate, the tenant vacated the suite on September 4, 2017. The tenant's application for a monetary award represented a return of the 5 days in rent that the tenant felt he had overpaid.

As described above, Section 67 of the *Residential Tenancy Act* only allows me to grant a monetary order when one party has proved the existence of damage and loss, stemming *directly* from a violation of the tenancy agreement or in contravention to the *Act*. I do not find, based on the testimony and evidence presented at the hearing, that the landlords had violated the tenancy agreement of the *Act*. While, I acknowledged that the tenant paid rent for a time period that he did not occupy the rental unit, the tenant testified that it was his decision to vacate the suite because of the friction that had arisen between the landlord and his roommate. Little evidence was presented at the hearing that the landlords violated the tenancy agreement, breached the *Act* or forced the tenant out of the rental unit prior to September 9, 2017. For these reasons, I dismiss the tenant's application for a monetary award.

As the tenant was unsuccessful in his application, he must bear the cost of his own filing fee.

Conclusion

The tenant's application for a monetary award 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 11, 2017

Residential Tenancy Branch