



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. The Tenant states that the Landlord was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail. The Tenant also states that the Landlord was called on January 9, 2018 and the Landlord confirmed receipt of the Materials. Given this evidence I find that the Landlord has been served in accordance with Section 89 of the Act and has full knowledge of the Materials. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy agreement was signed on February 7, 2017 for a tenancy start date of March 1, 2017. Rent of \$1,300.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$650.00 as a security deposit.

The Tenant states that the Landlord informed the Tenants that they could not move into the unit on March 1, 2017 as the outgoing tenants were still moving out and repairs were needed to the unit. The Tenant states that as they had already moved out of their old unit they had to stay at a hotel for the night and that the Landlord paid the hotel costs. The Tenant states that they were not able to move into the unit until 3:00 p.m. the next day. The Tenant states that they paid full rent for the month of March 2017 and claims a refund of \$45.00 for not being able to move into the unit as provided by the tenancy agreement.

The Tenant states that as a result of not being able to move into the unit as expected the Tenants had to take the day off work on March 2, 2017 and each lost a day's income. The Tenant claims \$280.00. No employment records or pay slips were provided for this claim.

The Tenant states that the kitchen was damaged at the outset of the tenancy. The Tenant states that the Landlord made repairs to the kitchen from the onset of the tenancy until Jun 9, 2017. The Tenant states that the kitchen was not useable for that period of time and that the Tenants either ate out at restaurants or brought home cold deli food to eat. The Tenant states that they did not have a microwave to heat foods and they could not use the kitchen for cooking purposes. The Tenant claims a loss equivalent to a half month's rent for 3.5 months in the amount of \$2,275.00.

The Tenant states that at move-in the unit was not clean and that the Landlord did not clean the construction debris from the unit during or after the end of the construction. The Tenant claims \$110.00 for their labour to clean the unit at move-in and for the construction clean ups.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Based on the Tenant's undisputed evidence I find that the Landlord

failed to provide the Tenant access to the unit on the first day of the tenancy, failed to provide the Tenant with a reasonably clean unit at the outset, failed to provide the Tenant with full use of the unit for 3.5 months from the onset of the tenancy and failed to clean up during and after the construction activities. As a result I find that the Tenant is entitled to the undisputed claimed amount of **\$45.00** for the inability to move into the unit on the agreed date, **\$2,275.00** for the loss of use of the kitchen and **\$110.00** for the Tenant's labour to clean the unit. As the Tenants did not provide any supporting employment evidence for their claim of lost employment income but considering the undisputed evidence of the Landlord's breach in failing to provide access to the unit until late afternoon March 2, 2017 and accepting that the Tenants did lose income for that reason I find that the Tenants are only entitled to a nominal sum of **\$100.00**.

As the Tenants' application has been successful I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,630.00**. The Tenant may deduct this amount from future rents payable in full satisfaction of the claims.

Conclusion

I grant the Tenant a monetary order under Section 67 of the Act for the amount of **\$2,630.00**. The Tenant may deduct this amount from future rent payable in full satisfaction of the claims. If necessary, this order may be filed in the Small Claims 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: January 11, 2018

Residential Tenancy Branch