



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, return of her security deposit, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant and her witness (the “Witness”), both of whom provided affirmed testimony. The Landlord did not attend.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Landlord did not attend the hearing, I inquired with the Tenant regarding service of these documents as explained below. The Tenant and Witness were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Tenant testified that the Application, the Notice of Hearing, and the evidence before me were sent to the Landlord at the address for service for the Landlord listed on the tenancy agreement, by registered mail, on November 4, 2017. When asked, the Tenant provided me with the address to which the registered mail was sent and I note that it matches the address for service for the Landlord listed in the tenancy agreement in the documentary evidence before me. The Tenant also provided me with the registered mail tracking number. Based on the above, I am satisfied that the Landlord was deemed served with the Application, the Notice of Hearing, and the evidence before me on November 9, 2017, five days after they were sent by registered mail.

At the request of the Tenant, copies of the decision and any orders issued in her favor will be e-mailed to her at the e-mail address provided by her in the online application system.

Preliminary Matters

Although the Witness was present with the Tenant at the start of the hearing, she was asked to leave the room and excluded from the proceedings except when called upon to provide evidence and testimony.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement, return of her security deposit, and recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me, which was signed by the Tenant and the Landlord on September 1, 2017, states that the month-to-month tenancy began on September 15, 2017. The tenancy agreement states that rent in the amount of \$1,200.00 is due on the 15th day of each month, and that a security deposit in the amount of \$600.00 was paid by the Tenant on September 1, 2017.

The Tenant and the Witness stated that the rental unit was located online and that they attended the rental unit together on September 1, 2017, at which point the tenancy agreement was signed and the \$600.00 damage deposit was paid. The Tenant stated that she returned the following day and paid the first month's rent in the amount of \$1,200.00. In support of this testimony the Tenant provided me with a copy of the rent receipt. The Tenant stated that the Landlord also wanted her to pay money towards the cost of installing a washing machine and that she paid \$200.00 to the Landlord for this purpose.

The Tenant stated that her friend was schedule to move her possessions into the rental unit on September 1, 2017, as she would be out of the country, and that when her friend attended the rental unit for this purpose, she could not move the Tenant's belongings into the rental unit as it was filled with someone else's possessions, unclean, and uninhabitable due to a leak, the lack of a washing machine, and a non-functional bathroom. The Tenant testified that when she returned to the country with her family on September 27, 2017, she telephoned the Landlord and advised him she would need to move into the rental unit the following day. However, the Tenant testified that when she attended the rental unit on September 28, 2017, she could still not move in as it was still filled with someone else's possessions, unclean, lacked the washing machine she had paid to install, and did not have a fully functional bathroom.

As a result, the Tenant testified that the Landlord agreed to refund her money and let her out of the tenancy agreement. Despite the foregoing, the Tenant stated that the Landlord never refunded any of her money and has stopped responding to her phone calls and mail. As a result, the Tenant sought \$2,100.00 for the return of the \$1,200.00 in rent paid, her \$600.00 security deposit, the \$200.00 paid towards the installation of the washing machine as well as recovery of the \$100.00 filing fee.

The Landlord did not attend the hearing to provide any evidence or testimony for my consideration.

Analysis

Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in their absence. Although the Landlord, who is the respondent in this matter, did not attend, as stated earlier in the decision, I am satisfied that the Landlord was deemed served with notice of the date and time of the hearing and the reason for the Application on November 9, 2017. As a result, and pursuant to section 7.3 of the Rules of Procedure, the hearing proceeded in the Landlord's absence.

In the absence of evidence to the contrary, I accept the Tenant's undisputed and affirmed testimony that the Landlord owes her \$2,000.00 for failure to comply with his obligations under the *Act*, regulation, or tenancy agreement. Pursuant to section 72 of the *Act*, I also find that the Tenant is entitled to the recovery of the \$100.00 filing fee.

Based on the above, the Tenant is therefore entitled to a Monetary Order in the amount of \$2,100.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$2,100.00. 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: May 16, 2018

Residential Tenancy Branch