



Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC OLC

Introduction

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

- a monetary award for damage to the unit, site or property pursuant to section 67 of the *Act*; and
- an Order directing the landlord to comply with *Act* pursuant to section 62.

Both the tenant and agent for the corporate landlord, L.F. (the "landlord") attended the hearing. Both parties were provided a full opportunity to present submissions, testimony and evidence to the hearing.

The landlord confirmed receipt of the tenant's application for dispute and evidentiary package.

Issue(s) to be Decided

Is the tenant entitled to a monetary award?

Should the landlord be directed to comply with the *Act*?

Background and Evidence

Undisputed testimony was provided to the hearing by the tenant that this tenancy began on February 1, 2017. Rent **was until September 1, 2017 originally \$1,050.00 per month. Rent** is now \$1,100.00 per month, and a security deposit of \$525.00 paid at the outset of the tenancy, continues to be held by the landlord.

The tenant has applied for a monetary award of \$1,866.29 which she said reflected the time she had been unable to occupy the rental unit because of a sewer back-up that required the attention of a professional restoration company. In November 2017, the parties previously attended a hearing before the *Residential Tenancy Branch* in which the tenant was granted a monetary award for the same issue. The tenant said that at the time of the previous hearing she was prevented from applying for compensation related to the time period in question today.

The tenant is seeking compensation for the eight days in June 2017 (June 23 to June 30) that she could not occupy the rental unit, along with a return of the rent associated with the entire month of September 2017 and for October 1, 2017 to October 13, 2017.

The landlord did not dispute that a flood had occurred as described by the tenant and agreed with the timeline provided. The landlord questioned whether the tenant should be granted compensation for the dates listed in September and October 2017, arguing that the tenant's brother was in fact in occupation of the rental unit during this time. The tenant disputed this notion, saying that her brother only visited the rental unit when the restoration company was in attendance. She said that her brother came to the property to supervise the work and to ensure that all personal belongings were being adequately cared for. The tenant said that her brother did not sleep in the property during his visits and only attended during the day time.

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 her entitlement to a claim for a monetary award.

The tenant explained that a drain back up and the associated repairs had prevented her from occupying the rental unit for the time period of June 23 to June 30, 2017, the entire month of September 2017 and from October 1 to October 13, 2017. The landlord did not dispute that a sewer and drain blockage had occurred as described by the tenant. The landlord only questioned the associated time line provided with the period of loss for which the tenant is seeking compensation.

After having considered the oral testimony of both parties, and reviewing the evidentiary package provided to the hearing by the tenant, I find that the tenant has sufficiently demonstrated that she was without use of the rental unit for the time periods listed in her application for dispute. I accept the tenant's oral testimony that her brother was only present in the rental unit when the restoration company were performing work on the

unit and I find her explanation for his attendance in the unit on the dates in question be plausible.

During the hearing, the landlord questioned the monetary figured cited by the tenant. The tenant has applied for compensation of \$1,866.29, while the landlord said a figure of \$1,841.29 more accurately reflected the time period associated with the loss.

I find that the tenant is entitled to a monetary award for the entire month of September 2017 (\$1,100.00) along with a monetary award for the 21 days that she was without use of the rental unit (June 23-30 & October 1-13) equivalent to ~~\$757.37 or \$36.06/day~~ **\$741.29**.

Based on all of the evidence presented at the hearing, I find that the landlord is making an earnest effort to attend to the tenant's needs related to the renovation and repair and find no reason to make an Order directing them to comply with the *Act*.

Conclusion

Pursuant to section 67 of the Act, I grant the tenant a Monetary Order in the amount of ~~\$1,857.37~~ **\$1,841.29**. 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.

The tenant's application directing the landlord to comply with the *Act* 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: June 7, 2018

Residential Tenancy Branch

DECISION AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON JUNE 27, 2018
AT THE PLACES INDICATED ON PAGE 2 & 4.