



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on July 6, 2018. The Tenant applied for multiple remedies, as follows, pursuant to the *Residential Tenancy Act* (the *Act*):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- a monetary order for return of the security or pet deposit; and,
- recovery of the filing fee.

Both sides were present at the hearing. All parties provided testimony and were given a full opportunity to be heard, to present evidence and to make submissions. The Landlord stated she got the Tenant's Notice of Hearing package. The Tenant stated he did not serve his evidence package to the Landlord because he did not know he had to. The Landlord did not submit any documentary evidence. I am satisfied the Landlord has been sufficiently served with the Notice of Hearing. However, since the Tenant did not serve his evidence in accordance with the rules of procedure, I will not be considering it in this hearing.

Residential Tenancy Branch Rule of Procedure 3.14 requires that evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondent not less than 14 days before the hearing. Since the Tenant failed to serve his evidence to the Landlord, I will not consider the Tenant's documentary evidence in this hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant has applied to have the security deposit returned to him. However, he stated that he did not provide his forwarding address to the Landlord, in writing, other than by way of his Application for Dispute Resolution.

During the hearing, I confirmed that the forwarding address for the Tenant was as it was listed on the Application for Dispute Resolution, and confirmed that the Landlord had it. I find the Landlord is served with the forwarding address of the Tenant, as of the date of this hearing.

The Landlord must deal with the deposit pursuant to section 38 of the *Act*. The Tenant's application for return of the security deposit is premature, and is dismissed with leave to reapply. The Tenant may re-apply if the Landlord does not claim against or return the deposit in full within 15 days of this hearing date.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the *Act*?

Background and Evidence

Both parties agreed that rent was \$1,000.00, plus 60% of the utilities. The Tenant moved in on January 1, 2017, and moved out at the end of August 2017. The Tenant stated that he wants \$3,500.00 in compensation because he was denied peace and quiet, and the Landlord fraudulently took money from him for a BC Hydro bill. The Tenant stated that he believes the Landlord took his money for utilities and paid other bills, which is why the hydro eventually got cut off. The Tenant stated this happened sometime in the summer of 2017, but was not able to provide a clear date as to when it occurred.

The Tenant stated that he had to run an extension cord to the neighbour's house to have power for the last part of his tenancy. The Tenant stated that when the power was cut off, he lost some food items (a turkey, some juice, hot dogs, bread) because the

fridge was not running. The Tenant stated that he also believes the Landlord entered his unit and took his hard drive but acknowledged that he has no proof of this. The Tenant stated that he called BC Hydro around the time the power was shut off, and was informed that there was a \$1,600.00 balance owing on the account.

The Tenant stated that the Landlord was noisy but the Landlord denies this claim. The Landlord also denies that she was noisy, stole the Tenant's hard drive, that she entered the Tenant's unit, or that she harassed him in any way.

The Landlord stated that in the early part of 2017, she was on leave from work and was not monitoring her utility bills closely, nor was she forwarding the amounts to the Tenant in a timely manner. The Landlord stated that in May 2017, she noticed the balance was high on her account and approached the Tenant to divide the bills in accordance with the agreed upon division (60% for Tenant and 40% for Landlord). The Landlord stated that she collected \$200.00 from the Tenant on May 8, 2017, and another \$520.00 on June 17, 2017, which were paid directly to BC Hydro.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. The Tenant must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

After reviewing the totality of the evidence, and testimony before me, I am mindful that the Tenant has provided no documentary evidence to support any of his claims. The Tenants late evidence is not admissible, and I only have testimony from the Tenant on this issue.

The Tenant is looking for compensation for loss of “peace and quiet.” However, I do not find the Tenant sufficiently elaborated on this matter or explained how his life was materially impacted such that I could find any compensation is due. I also note the Landlord specifically denies that she entered the Tenant’s unit, or harassed him in any way. The Landlord also denies having made any excessive amount of noise as the Tenant is alleging. The Landlord is shocked that the Tenant feels this way. I dismiss this portion of the Tenant’s application.

The Tenant also claims the Landlord stole his hard drive. However, he has no proof of this and the Landlord denies it. As such, I find the Tenant has not sufficiently proven his claim and I dismiss this portion of the Tenant’s application.

Next, I turn to the BC Hydro bill and the issue with the power being shut off due to non-payment. Having considered the totality of the information on this matter, I note that the Landlord lives upstairs, and pays for a portion of the utilities. I find the Landlord is responsible for managing the billing of the utilities and I find the Landlord failed to effectively manage the outstanding bills. The evidence before me indicates that the Landlord did not monitor her account all that closely, nor did she forward the Tenant with any of the BC Hydro bills until May 2017 at which point there were significant past due amounts. I find the Landlords failure to deal with the BC Hydro account in a timely and effective manner contributed to the power being shut off due to non-payment.

I find the Landlord breached the Act and failed to fulfill her obligations as a Landlord and I find the power being shut off is largely the Landlord’s fault. As a result, I find the Tenant is entitled to some compensation. However, I also note the Tenant has failed to substantiate what he lost, what it was worth, and what loss he incurred. The Tenant did not itemize any of the items he lost from the loss of power (spoiled food). The Tenant only mentioned a few food items he lost during the hearing. Although I find the Tenant has failed to prove the value of his loss, I find a nominal award is appropriate, due to the Landlord’s failure to effectively manage the utilities. I award the Tenant a nominal

amount of \$200.00 for food items he may have lost, and some inconvenience related to the power being shut off. I decline to award more than this because it is unclear when exactly the power was shut off, how long the Tenant was without power, and how much his spoiled food items were worth.

As the Tenant was partly successful with his application, I award him half of the filing fee, pursuant to section 72 of the Act. In summary, I award the Tenant a monetary order in the amount of \$250.00

Conclusion

The Tenant's application for return of the security deposit is dismissed, with leave to reapply.

The Tenant is granted a monetary order in the amount of **\$250.00**, as specified above. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: July 06, 2018

Residential Tenancy Branch