



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC

Introduction

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

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

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

Both parties confirmed receipt of each other’s evidentiary packages, and the landlord confirmed receipt of the tenant’s application for dispute. I find that the parties were duly served in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award? Can the tenant recover the filing fee?

Background and Evidence

The tenant explained that he was set to take possession of the rental unit on November 1, 2017. Rent was established at \$1,695.00 per month, and a security deposit of \$847.50 paid at the outset of the tenancy was returned to the tenant.

The tenant stated that he and the landlord had reached an agreement in October 2017 whereby the tenant would occupy the rental unit starting on November 1, 2017. The tenant said that shortly after agreeing to this occupation date the landlord reneged on their agreement and did not allow the tenant to occupy the rental unit. The landlord largely agreed with the tenants submissions. The landlord acknowledged that the parties had entered into a verbal tenancy agreement but stated that no tenancy agreement was ever signed by the parties. The landlord

said that in the days prior to November 1, 2017 she had agreed to allow the tenant to move some boxes into the mud room of the rental unit.

On October 24, 2017 the tenant and the landlord had a disagreement and the landlord said that this incident caused her to re-think the tenancy. The landlord said that she had some reservations around the tenancy prior to the October 24, 2017 incident because of conflicting information that the tenant had provided to her. The landlord said that this information, coupled with the October 24, 2017 incident led her to cancel the tenancy agreement and return the tenant's security deposit and first month's rent.

The tenant seeks compensation of \$9,703.87 in satisfaction for the loss that he allegedly suffered as a result of the landlord's actions. The tenant said that he was forced to take a large, two bedroom rental unit at a rental rate that he could not afford. As part of his evidentiary package the tenant submitted a copy of the tenancy agreement he entered into with a different landlord on October 27, 2017. Rent on this unit was \$2,598.00 and the tenancy began on November 1, 2017. The tenant also submitted hydro and Telus bills for the new rental unit he was forced to take.

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 claim for a monetary award.

The tenant is seeking a monetary award of \$9,703.87. The tenant said this figure represented a return of his hydro and Telus bills, a return of miscellaneous expenses related to his claim and a return of the increased rent that he was forced to pay as a result of the landlord cancelling his tenancy agreement.

The question before me is whether the parties entered into a tenancy agreement, and if the tenant should be compensated to the landlord's breach of this agreement.

Section 1 of the *Act* defines a "tenancy agreement" as, "an agreement whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, including a license to occupy a rental unit.

Section 16 of the *Act* states, "the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the

tenant ever occupies the rental unit.” While section 17 of the *Act* states, “a landlord may require, in accordance with this *Act* and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.”

During the hearing the landlord acknowledged that the parties had entered into a verbal agreement for the tenant to occupy the rental unit; however, she stated that they never signed a tenancy agreement. I find that the parties signing a tenancy agreement is not a requirement of a tenancy agreement as per the definition provided by section 1 of the *Act*. I find the landlord’s actions in accepting a security deposit and first month’s rent, as well as her allowing the tenant to place boxes in her mud room to be an indication that the parties had entered into a contractual agreement to allow the tenant to occupy the suite. At common law, formation of a contract requires an offer, acceptance of this offer and some consideration paid, consideration being a promise of something of value given in exchange for something of value.

Residential Tenancy Policy Guideline #16 examines the issue of Compensation in detail. It notes:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred...In order to determine whether compensation is due, the arbitrator may determine: a party to the tenancy agreement failed to comply with the *Act*, regulations or tenancy agreement; loss or damage has resulted from this non-compliance; the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and **the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.**

It is clear that the landlord breached the contract and tenancy agreement between her and the tenant, and that the tenant suffered damages because he had to find alternate accommodation on short notice at a much higher price. Nevertheless, applying basic contractual damage principles and the *Policy Guideline* as described above, the tenant was also under an obligation to take steps to mitigate his loss by seeking other less expensive accommodation for future months. He did not do this, but chose to remain in the more expensive premises. Given that the tenant suffered medical issues but was seemingly recovered a short time later, I decline to award him damages for more than the difference in rent he had to pay for the first two months in the more expensive suite that he took on very short notice.

I find the tenant’s application seeking \$9,703.87 to be excessive. The tenant has suffered a loss, however, rent would have been due under the terms of the initial tenancy agreement entered into, and it would therefore be incorrect to award the tenant a return of all rent associated with his new tenancy agreement. I find that a return of the differences of rent to be a more accurate reflection of the expenses incurred by the tenant. I therefore, allow the tenant to recover a monetary award of \$1,806.00 in reflection of the difference in the first two month’s rent

was forced to pay. This figure is two times the difference between the \$1,695.00 to which the parties agreed and the \$2,598.00 that the tenant agreed to under the terms of his new tenancy.

I find that the tenant would have incurred expense related to hydro and Telus in any rental unit that he occupied and therefore decline him the funds requested for a return of these expenses. In addition, I decline to award the tenant his miscellaneous expenses related to preparation of evidence and photocopying. I find that these are expenses which can reasonably be expected to be incurred by a person submitting an application for a monetary award.

As the tenant was successful in his application, he may recover the \$100.00 filing fee from the tenant.

Conclusion

I issue a Monetary Order of \$1,906.00 in favour of the tenant. This amount includes a return of the \$100.00 filing fee along with a monetary award of \$1,806.00.

The tenant is provided with a Monetary 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: July 11, 2018

Residential Tenancy Branch