



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) by the tenant seeking remedy under the *Residential Tenancy Act* (“Act”) for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and for the recovery of the cost of the filing fee.

The tenant and the landlord attended the teleconference hearing. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The landlord confirmed that they received and reviewed the tenant’s documentary evidence prior to the hearing. The tenant testified that she forgot to update her service address since filing her application and as a result, I find the landlord sufficiently served the tenant by registered mail as the responsibility for changing her service address rests solely on the tenant in this matter.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is the tenant entitled to monetary compensation under the Act, and if so, in what amount?
- Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on August 5, 2011 and reverted to a month to month tenancy after July 31, 2012. The tenancy ended on October 31, 2017 when the tenant vacated the rental unit.

The tenant's monetary claim of \$2,326.45 is comprised as indicated below contains an adding error. Although the total is indicated as \$2,466.45 I find that the application served on the landlord must remain at \$2,326.45 including the filing fee as the tenant failed to serve the landlord with an amended application for a higher amount:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of use of laundry for 23 weeks (\$21.15 x 23 weeks)	\$486.45
2. Rent x 2 months due to landlord failing to comply with reason stated on 2 Month Notice to End Tenancy for Landlord's Use of Property dated August 24, 2017 ("2 Month Notice") (\$920.00 x 2)	\$1,840.00
3. Filing fee	\$100.00
4. Cost of postage	\$40.00
TOTAL	\$2,466.45

I also find that proceeding with a higher claim at the hearing would unfairly prejudice the landlord contrary to the Rules. Therefore, I find the maximum claim before me is \$2,326.45.

Regarding item 1, according to the terms of the tenancy agreement laundry is included in the monthly rent and is indicated as "free" on the tenancy agreement. The tenant testified that between May and October of 2017 the washing machine did not function and that even though she advised the landlord, the landlord refused to have the washing machine repaired or replaced. The landlord referred to a June 1, 2017 document that supports that a repair person attended and wrote on the invoice:

"...detected defective bearing on outer tub. Needs to be replaced inner and outer tub. Customer won't proceed with repair. Wants to just replace unit. This is a compact model but there is a lot of space for any washer."

[Reproduced as written]

The landlord also admitted that the landlord decided not to replace the washing machine due to the tenant not agreeing to a rent increase.

The tenant stated that she arrived at the amount claimed for item one of \$486.45 by estimating that it took her one hour at \$10.90 per hour for her time plus \$8.00 worth of laundry for that hour and \$2.25 to dry the laundry for a total of \$21.15 per week and multiplied that amount by 23 weeks which is May 22, 2017 to October 31, 2017. The tenant referred to an email dated May 22, 2017 where she sent a notice by email to the landlord about the washing machine not working which the landlord confirmed she had received.

Regarding item 2, the tenant is claiming \$1,840.00 in compensation for the landlord not complying with the reasons stated in the 2 Month Notice. The landlord wrote on the 2 Month Notice which tenant did not dispute the following reason for ending the tenancy:

“The rental unit will be occupied by the landlord or the landlord’s close family member (parent, spouse or child; or the parent or child of that individual’s spouse).”

[Reproduced as written]

The tenant submitted rental ads in support dated in December 2017 to support that the landlord has re-rented the rental unit. The landlord admitted that she re-rented the rental unit in February 2018 for one month due to financial issues. The rental ad indicates that monthly rent was \$1,950.00 whereas the tenant was paying \$920.00 per month in rent.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

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Test for damages or loss

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 what was reasonable under the *Act* to minimize the damage or loss.

Item 1 – Residential Tenancy Policy Guideline #1 – Landlord & Tenant – Responsibility for Residential Premises states the following:

“ **MAJOR APPLIANCES**

3. **The landlord is responsible for repairs to appliances provided under the tenancy agreement** unless the damage was caused by the deliberate actions or neglect of the tenant. “

[My emphasis added]

I find the landlord provided insufficient evidence that the tenant deliberately damaged the washing machine and as a result, I find the landlord was responsible for either repairing or replacing the washing machine in a reasonable timeframe after May 22, 2017 when the landlord was advised by email that the washing machine was no longer functioning. Instead, the landlord decided not to repair or replace the washing machine for the remainder of the tenancy and I find that the landlord has breached the tenancy agreement term that laundry was included in the monthly rent. Therefore, I find the tenant has met the burden of proof and I find the amount claimed of \$486.45 to be reasonable given the amount of monthly rent and given the inconvenience to the tenant over the period of 23 weeks which is over five months. Therefore, I award the tenant **\$486.45** as claimed for item 1.

Item 2 – Section 51(2) of the *Act* applies and states:

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within

a reasonable period after the effective date of the notice, or

(b) **the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,**

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[My emphasis added]

As the landlord has confirmed re-renting the rental unit to new tenants effective February 2018, I find the landlord failed to use the rental unit for the stated purpose for at least six months as required by the *Act* as the tenancy ended October 31, 2017. Therefore, I find the landlord breached the *Act* by re-renting in just over three months after the tenancy ended. I also note the landlord advertised the rental unit for over double the monthly rent than the tenant was paying. I find the landlord owes the tenant **\$1,840.00** which is double the \$920.00 monthly rent pursuant to section 51(2) of the *Act*. I note that I have applied the applicable law that was in effect when the 2 Month Notice was issued dated August 24, 2017.

Item 3 - As the tenant's application was successful, I would normally grant the tenant the recovery of the cost of the filing fee in the amount of \$100.00 pursuant to section 72 of the *Act*; however I find that by adding the filing fee would make the total monetary claim \$2,426.45 which exceeds the amount claimed on the tenant's application. Therefore, as indicated on page 2 above, I will not exceed the amount claimed of \$2,326.45.

Item 4 – Although the tenant has claimed for the costs of registered mail, I find that the *Act* does not provide for a remedy for the costs of service of documents in relation to the application. Therefore, this item is dismissed without leave to reapply.

The tenant has established a total monetary claim of **\$2,326.45** as described above which is the amount claimed by the tenant in the application before me that was served on the landlord. I grant the tenant a monetary order pursuant to section 67 of the *Act*, in the amount of **\$2,326.45** accordingly and dismiss any amount that exceeds that total, without leave to reapply.

I caution the landlord not to breach any terms of a tenancy agreement in the future and to complete repairs to a rental unit in timely basis in the future.

I caution the landlord not to use the rental unit for a different reason other than what is stated in the 2 Month Notice in the future.

Conclusion

The tenant's application is successful but is limited to \$2,326.45 as claimed and will not exceed that amount to ensure fairness to the respondent who was served with the application in that amount.

The landlord has failed to complete repairs to the washing machine in a timely manner, has breached the tenancy agreement and has failed to comply with the reason stated in the 2 Month Notice for at least six months from the effective date of the 2 Month Notice contrary to the *Act*. Accordingly the tenant is awarded \$2,426.25 as indicated above. The tenant has been granted a monetary order pursuant to section 67 of the *Act*, in that amount. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord has been cautioned as described above.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: October 24, 2018

Residential Tenancy Branch