



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord's agent (the landlord) and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and evidentiary package which was sent by way of Canada Post on March 28, 2018. In accordance with sections 88 and 89 of the *Act*, I find that the landlord has been duly served with the Application and evidentiary package.

The landlord confirmed that they did not submit any evidence to the Residential Tenancy Branch (RTB) or to the tenant.

Issue(s) to be Decided

Is the tenant entitled to compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to a monetary award for the return of all or a portion of their security deposit?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

Written evidence was provided by the tenant that this tenancy began on March 01, 2015, with a monthly rent of \$1,500.00 due on the first day of each month. The landlord and tenant confirmed that the tenant paid a security deposit in the amount of \$750.00 and that the landlord returned \$240.00 of it to the tenant. The tenancy agreement indicates that storage is included as a part of the rent.

The tenant also provided in evidence;

- A copy of an estimate for mouse removal in the amount of \$600.00;
- A copy of a receipt for a wildlife control company regarding work done for removal of a squirrel and screens installed to prevent them from entering the rental unit dated May 28, 2016, for \$518.70;
- A copy of a receipt for a bamboo mat in the amount of \$111.99;
- A copy of a letter containing the tenant's account of a severe mouse problem in the rental unit with mouse droppings throughout the unit and the health and safety risks associated to it as well as unstable building elements within the rental unit such as collapsing patios, stairs, fences, arbours, ceilings. The letter also states that rat feces impacted the use of a storage area that was a part of the tenancy agreement. The letter submits that the value of the tenancy was reduced due to these various issues. Finally, the letter states that the tenant went back to the rental unit after vacating and discovered that it was renovated. The tenant submitted that the person who answered the door stated that the owner does not live there, which the tenant maintains is in contravention of the two month notice to end tenancy given to the tenant;
- Various pictures taken showing mouse droppings throughout the rental unit, including on a baby stroller, around the fireplace, on the countertop, under a couch and other pictures showing the tenant's efforts to trap mice;
- The tenant also submitted pictures of a piece of plywood covering a deck, a picture of tree in the winter that the tenant states is a rotting arbour, a picture of a rotten deck, and a picture of a ceiling that the tenant alleges is collapsing;
- Copies of e-mail exchanges from 2015 and 2016 regarding issues with squirrels coming into the rental unit including e-mails dated May 24, 2016, in which the tenant notifies the landlord about a squirrel issue with the landlord stating that they will let the owner know and another dated May 31, 2016, advising the landlord of the tenant's payment for a pest control company in the amount of

\$520.00 to address the problem after the landlord has not responded to the issue;

- A copy of an e-mail from the tenant to the landlord dated April 13, 2017, in which the tenant states that they are having issues with mice in the rental unit and that they found a dead rat in the laundry room. The landlord's agent responds that they she will look for a company to deal with the mice problem;
- A copy of an e-mail from the tenant to the landlord dated April 27, 2017, requesting for the landlord to address the issue with rodent problem. The tenant refers to mice feces being found throughout the entire rental unit on a daily basis and rat feces found in the laundry facility;
- A copy of an e-mail from the landlord's agent dated May 25, 2017, in which the agent states that they are aware that the problem gets worse in the warmer weather but that the landlord is not willing to do anything about it as the rodents will continue to come back;
- Copies of e-mail exchanges from the end of May 2017 and June 2017 regarding the tenants requesting to meet with the owner of the rental unit and the landlord's agent stating that the landlord has requested for the tenants to work with the landlord's agents to discuss the mice problem in the rental unit;
- A copy of an e-mail from the tenant to the landlord dated July 30, 2017, in which the tenant states that there were efforts made to deal with the rodent infestation with traps and poison, as discussed with the agent, but that the problem has not gotten better. The tenant requests for the landlord to hire a professional company to address the issue and provides information for one company that has provided a quote of \$600.00 which the tenant indicates that the landlord has received previously on June 29, 2017; and
- A copy of a Monetary Order Worksheet which details the tenant's claim as follows:

Item	Amount
Invoice for Squirrel Removal	\$518.70
Receipt for Bamboo Mat to cover rotten patio	111.99
Replacement of Couch	700.00
Estimate for Mice Removal	600.00
Lack of Use of Storage Space - \$75.00 X 29 months	2,175.00
Negligence of Maintenance for Rotting Deck, back roof of house, back stairs, holes in patio and other issues with	8,700.00

house repairs for \$300.00 X 29 months	
Return of remainder of Security Deposit	\$510.00
Compensation for Two Month Notice due to landlord not living in the rental unit	\$3,000.00
Requested Monetary Award	\$16,315.69

The tenant testified that her forwarding address was given to the landlord when she sent the Application for Dispute Resolution to the landlord on March 28, 2018. The tenant submitted that there was a dime sized hole in the deck which was rotten underneath and the reason why the tenant bought the bamboo mat to put over it. The tenant testified that the couch she is claiming for was bought off of craigslist and she did not have any proof of payment. The tenant stated that the roof over the storage area was rotten and the raccoons pulled off all the siding.

The tenant stated that she sent an e-mail to the landlord about squirrels living in the attic of the house. The tenant testified that the landlord was not responsive so the tenant paid money out of their own pocket for a pest control company to install screens and one way doors to prevent the squirrels from going into the attic.

The tenant referred to a picture of the floor showing multiple mouse droppings and indicated that the droppings came from a couch which the tenant had to throw out due to the mouse feces. The tenant stated that the landlord never sufficiently addressed the issue with the mice infestation. The tenant submitted that the landlord gave the tenant a notice to end tenancy when the tenant stated to the landlord that they were going to make an application for dispute resolution with the Residential Tenancy Branch to address the mice issue with the landlord. The tenant confirmed that the claim for the mice removal was an estimate and not for work completed.

The tenant stated this tenancy ended due to a notice served under section 49 of the Act for the landlord's use of the property. The tenant submitted that she went to the house shortly after being evicted in October 2017 and noticed that it was newly renovated. The tenant testified that when she knocked on the door a child answered who did not speak English and the tenant was unclear if they were related to the owner of the rental unit. In her testimony the tenant indicated that she was not confident about whether or not the owner occupied the rental unit after the renovations were completed.

The landlord confirmed that they did not make an application for dispute resolution upon receiving the tenant's forwarding address with the Application. The landlord indicated

that the owner of the rental unit renovated it and moved in shortly after the renovations were completed until May 2018. The landlord disputed the tenant's statements regarding the condition of the rental unit and testified that it was not as bad as the tenant has indicated.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Having reviewed the evidence and testimony, I find that the tenant has established that they suffered a monetary loss in hiring a pest control company to remove a squirrel and set up screens to prevent future entry into the rental unit; however, I find that the tenant has not demonstrated that this loss occurred due to actions or neglect of the landlord or that the tenant minimized the loss.

Although there may have been previous issues with squirrels in the rental unit in 2015, I find that the issue being claimed for occurred when the tenant advised the landlord's agent of the squirrel issue on May 24, 2016. The landlord advised the tenant that they would advise the owner of the squirrel issue on this same day but the tenant did not wait for a response from the landlord and had the pest control company remove the squirrels on May 28, 2016. I find that there is no evidence that this was an emergency repair that was necessary in order to preserve the residential premises pursuant to section 33 of the Act as it was not made for any of the purposes listed in section 33 such as blocked plumbing or electrical issues.

I find that the landlord should have had the right to complete the repair in a manner that they saw fit. If the landlord did not complete this repair, the tenant could have made an application with the Residential Tenancy Branch for the landlord to make the repair and to have rent reduced until the repair was completed. I find that the tenant did not give a reasonable time, specifying a specific date, by which a response was required as to the landlord's intentions before the tenant would take further action.

For the above reasons, I find that the loss for the pest control company in the amount of \$518.70 was not due to the actions or neglect of the landlord as the tenant. Therefore I dismiss the tenant's claim for the costs associated to the squirrel removal, without leave to reapply.

Having reviewed the evidence and affirmed testimony, I find that the tenant has not established that they have suffered a monetary loss associated to the removal of the mice as they confirmed in their testimony that their claim was for estimated costs, not for actual costs incurred. For this reason I dismiss the tenant's claim for \$600.00 for the estimate for mice removal, without leave to reapply.

Regarding the tenant's claim for the couch, having reviewed the evidence, I find that the tenant has not provided any proof of the actual amount required to compensate the tenant for the loss of the couch as no receipt, or any other evidence, was provided by the tenant. For this reason I find that the tenant has not sufficiently proven their claim in the amount of \$700.00 for the loss of the couch and it is dismissed, without leave to reapply.

Having reviewed the evidence and affirmed testimony I find that the tenant has provided a receipt and established a loss for the bamboo mat, however, I find that the tenant has not demonstrated that this loss was due to the actions or neglect of the landlord in violation of the Act, regulations or tenancy agreement. I find that the bamboo mat was not an emergency repair as it appeared to be cosmetic in nature. I find there is no evidence provided that the bamboo mat accomplished anything other than covering a hole.

I further find that there is no evidence provided that the tenant mitigated this loss by requesting the landlord to address the issue with the hole in the deck and providing a reasonable timeline for a response from the landlord before proceeding. For the above reasons, I dismiss the tenant's claim for the bamboo mat in the amount of \$111.99, without leave to reapply.

Having reviewed the evidence and testimony, I find that the tenant has not sufficiently demonstrated that there was reduced living space in the rental unit or a reduction in any services or facilities due to the repairs to the rental unit that the tenant indicated were needed which would reduce the value of the tenancy by the amount of \$300.00 per month as being claimed.

I further find that there is no picture or description of the storage space that was supposed to be included as a part of the tenancy, or any indication of the value of the storage on the tenancy agreement or a separate agreement to show that it was worth \$75.00 per month. I find that the tenant has not sufficiently demonstrated what the expected storage that was to be included as a part of the tenancy agreement and what the tenant actually received for storage space which would support the tenant's claim for a loss.

Even if I had found that the tenant had sufficiently proven the reduction in value of the tenancy or the reduction in value of the storage, and the actual amount required to compensate for that loss, I find that the tenant has not demonstrated that they tried to minimize their losses. I find that the tenant did not provide any evidence of addressing the issues with storage or the required repairs in the rental unit and providing a reasonable time for the storage issue to be addressed or the repairs to be completed before making an application with the RTB to have rent reduced until the tenant's claims were addressed.

In consideration of the above, the tenant's Application for compensation related to reimbursement of rent for repairs not completed and for loss of storage is dismissed, without leave to reapply.

Section 51 (2) of the Act that was in force prior to May 17, 2018, stipulates that a landlord must pay the tenant, in addition to the one month's rent in compensation for a two month notice to end tenancy pursuant to section 49 of the Act, an amount that is equivalent to two times the monthly rent if steps have not been taken within a reasonable period after the effective date of the notice to accomplish the stated purpose for ending the tenancy, or the rental unit is not used for that stated purpose for at least six months' duration.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I find that the tenant did not actually provide any documentary evidence to prove that the owner did not occupy the rental unit as indicated on the notice to end tenancy pursuant to section 49 of the *Act*. I further find that the tenant was not confident, when testifying about what happened upon visiting the rental unit after being evicted, about whether the owner was occupying the rental unit or not.

Based on a balance of probabilities, I find that I accept the landlord's testimony that owner did occupy the rental unit as stated on the notice to end tenancy within a reasonable period of the effective date of the notice until May 31, 2018. Therefore I dismiss the tenant's claim, pursuant to section 51 of the Act, for compensation equal to two month's rent, without leave to reapply.

Therefore, I find that the tenant has not satisfied the four elements required to determine a loss under the Act, regulations or tenancy agreement and the tenant's Application for compensation is dismissed, without leave to reapply.

Section 38 (4) allows a landlord to retain from a security deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain an amount to pay a liability or obligation of the tenant. I find that there is no evidence to show that the landlord had the tenant's agreement in writing to retain the security deposit.

If the landlord does not have the tenant's agreement in writing, section 38 (1) of the *Act* stipulates that within 15 days of either the tenancy ending or the date the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

I find that there is no evidence that the landlord made any application for dispute resolution within 15 days of the end of the tenancy or 15 days after receiving the tenant's forwarding address on the Application to retain a portion of the security deposit as required under section 38 (1).

Section 38 (6) of the *Act* stipulates that a landlord who does not comply with section 38 (1) of the *Act* may not make a claim against the security deposit or any pet damage deposit and must pay double the amount of the security deposit, pet damage deposit or both, as applicable. 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.

Pursuant to sections 38(6) and 67 of the Act, I find that the tenant is entitled to a monetary award in the amount of \$1,500.00, comprised of double the security deposit (\$750.00 x 2).

The landlord may still file an application for damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

As the tenant has been successful in the return of their security deposit, I allow the tenant's request to recover their filing fee in the amount of \$100.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the tenant's favour in the amount of \$1,360.00, for double the security deposit, less the \$240.00 that was already returned to the tenant, and to recover the filing fee from the landlord.

The tenant is provided with this Order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: November 01, 2018

Residential Tenancy Branch