



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

On April 30, 2018, The Tenant applied for Dispute Resolution seeking a monetary order for money owed or compensation for damage or loss under the *Act*, and for the return of the security deposit.

The Tenant appeared at the hearing; however the Landlord did not. The Tenant provided affirmed testimony that he served the Landlord with the Notice of Dispute Resolution Proceeding using registered mail sent on May 1, 2018. The Tenant provided a document from Canada Post that indicates the registered mail was delivered on May 10, 2018, and signed for by the Landlord Ms. M.K.

The Tenant testified that he located the Landlord using information received from the new purchaser of the dispute address and a skip trace type service.

Based on the testimony and evidence before me, I find that the Landlord received the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the *Act*.

The Tenant was provided the opportunity to present his evidence orally and in written and documentary form, and make submissions to me.

Preliminary and Procedural Matters

The *Act* requires that Applications for dispute resolution must be made within two years of the date the tenancy ends. The Tenant applied for dispute resolution on the last day of eligibility. The Tenant testified that he was unable to locate the Landlord until just prior to the deadline.

The Tenant testified that he served a copy of his documentary evidence to the Landlord using express mail sent on October 12, 2018. The Act provides that mailed documents are deemed received on the fifth day after they are mailed.

The Residential Tenancy Branch Rules of Procedure section 3.14 provides that evidence that is intended to be relied upon during the hearing must be received by the respondent not less than 14 days before the hearing.

Residential Tenancy Branch Rules of Procedure section 3.11 provides that if an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence.

I find that a fundamental principle of natural justice is that a party has a right to receive full disclosure of the evidence that will be considered and must have an opportunity to respond. I find no sufficient reason to explain why the Tenant would have delayed service of his evidence. The Tenant had the address since May 2018, and the Tenancy ended over two years prior.

I find that the Tenant served his documentary evidence late in contravention of rules of procedure 3.11 and 3.14. The Tenant's documentary evidence is excluded from the hearing.

The Tenant requested to proceed with his claims based solely on his oral testimony. The hearing proceeded based on his oral testimony.

I have reviewed all oral evidence before me. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to the return of double the security deposit?
- Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?
- Is the Tenant entitled to recover the cost of the filing fees?

Background and Evidence

The Tenant testified that the tenancy began on September 1, 2006 and ended on May 1, 2016. At the end of the tenancy, rent in the amount of \$799.50 was due to be paid to the Landlord each month. The Tenant paid the Landlord a security deposit of \$350.00.

The Tenant is seeking compensation for the following claims:

Skip Trace Fee	\$183.75
Canada Post Mail Forwarding	\$87.35
Parking Costs for 10 months	\$500.00
Security Deposit	\$700.00
One Month Rent	\$799.50
12 Months Compensation	\$9,594.00
Ongoing Palliative Relief	\$22,985.40
Total	\$34, 950.00

Skip Trace Fee

The Tenant testified that the Landlord moved and did not provide the Tenant with a contact number or address. The Tenant testified that he was not able to locate the Landlord so he hired a company to find the Landlord. The Tenant is seeking to recover the cost of \$183.75 for locating the Landlord.

Canada Post Mail Forwarding

The Tenant testified that he moved out of the rental unit on short notice. The Tenant testified that he paid a mail forwarding fee of \$87.35. The tenant testified that the Landlord failed to use the rental unit for the purpose stated in the notice to end tenancy, so the Landlord should be responsible to pay the cost of the mail forwarding.

Parking Costs for 10 Months

The Tenant testified that when the tenancy began in 2006, the Landlord used both sides of the driveway. At some point in 2008 the Landlord told the Tenant he could use one side of the driveway. In July 2015, the Landlord informed the tenant that he could no longer park in the driveway. The tenant is seeking compensation of \$500.00 for a loss of use of the driveway.

Security Deposit

The Tenant testified that he moved out of the rental unit on May 1, 2016. He testified that on May 6, 2016 he provided his forwarding address in writing into the Landlord's mailbox.

The Tenant testified that the Landlord did not return the security deposit to him within 15 days of receiving his forwarding address. The tenant testified that there was no agreement that the Landlord could retain any amount of the security deposit.

The Tenant is seeking double the amount of the security deposit in the amount of \$700.00 due to the Landlords breach of section 38 of the Act.

One Month Rent

The Tenant testified that he received a 2 Month Notice to End Tenancy for Landlord Use of Property on February 16, 2018, from the Landlord; however, he never received one month's rent in compensation from the Landlord. The Tenant is seeking the amount of \$

12 Months Compensation

The Tenant requested to amend this claim to be 2 Months' Rent in compensation. The Tenant is seeking \$1,599.00. The Tenant testified that the Landlord placed the rental property up for sale less than one month after the Tenant moved out of the rental unit. He testified that the Landlord did not use the rental unit for the Landlord or family to occupy. The Tenant testified that the Landlord's son was not living in the rental unit. The Tenant testified that he does not know the date the property was sold.

The Tenant also testified that he is seeking administrative penalties against the Landlord.

Ongoing Palliative Relief

The Tenant testified that he wants compensation of \$22,985.00 from the Landlord for ongoing palliative relief. The Tenant testified that his damages are ongoing so he is claiming an amount that puts his claims at the maximum amount that he can apply for compensation. The Tenant did not provide any further testimony regarding damages he has suffered that would entitle him to compensation for this claim.

Filing Fees

The Tenant is seeking to recover the cost of the filing fee for this application and prior applications. The Tenant submitted that if the previous arbitrator knew the Landlord

was selling the rental property; the Tenant would have been awarded the earlier filing fees.

Analysis

When a party makes a claim for damages or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant 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 Respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

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

Skip Trace Fee

The Tenant's claim for \$183.75 is dismissed without leave to reapply. The Tenant failed to establish that the actions of the Landlord were in violation of the Act. The legislation does not require a former Landlord to provide or notify a former Tenant of a forwarding address. The Tenant's choice to hire a company to locate the Landlord is not a cost that is recoverable from the Landlord.

Parking Costs for 10 Months

I find that the agreement at the start of the tenancy did not include parking as a term or condition of the agreement. The Tenant parked on the street for the first 2 years. While I accept that the Landlord permitted the Tenant to park in the driveway in 2008; I find

that there is insufficient evidence from the Tenant to establish that the terms of the tenancy were changed in 2008 to require the Landlord to provide parking. The Landlord required the parking spot back in July 2015, and the Tenant had to resume parking on the street. I find that the Landlord did not violate a term of the tenancy agreement. The Tenant's claim for \$500.00 is dismissed without leave to reapply.

One Month Rent

Section 51 (1) of the Act states that a Tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the Landlord on or before the effective date of the Landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Based on the Tenant's testimony, I find that the Tenant received a 2 Month Notice To End Tenancy on February 28 2018.

I find that the Landlord is obligated to compensate the Tenant the amount of \$799.50. I grant the Tenant a monetary order in the amount of \$799.50.

12 Months Rent Compensation

Section 51 (2) of the Act states:

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.

Since the Tenant does not know the date the rental unit was sold, I find that his claim fails and is dismissed without leave to reapply. There is insufficient evidence from the Tenant that the Landlord failed to occupy the rental unit for himself or a close family member for at least six month prior to the sale of the unit.

Security Deposit

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing,

the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

Based on the Tenant's testimony, I find that the tenancy ended on May 1, 2016, and the Tenant provided his forwarding address in writing to the Landlord on May 6, 2016. I find that there was no agreement that the Landlord could keep the \$350.00 security deposit.

I find that the Landlord breached section 38 of the Act and consequently owes the Tenant double the amount of the security deposit.

I grant the Tenant the amount of \$700.00.

Canada Post Mail Forwarding

The Tenant's claim for mail forwarding costs is dismissed without leave to reapply. There is insufficient evidence from the Tenant that the tenancy was ended improperly and that the loss occurred due to the actions or neglect of the Landlord.

Ongoing Palliative Relief \$22,985.40

Residential Tenancy Branch Policy Guideline #16 provides information with respect to types of damages that may be awarded to parties:

Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behavior. They are measured by the wronged person's suffering.

With respect to the Tenant's claim for compensation due to ongoing palliative relief, the Tenant has provided insufficient evidence to support his claim. The Tenant testified that his damages are ongoing but did not provide any further information. The Tenant's claim is dismissed without leave to reapply.

With respect to administrative penalties; I do not have the authority to adjudicate administrative penalties. The dispute resolution process is not the mechanism for

seeking administrative penalties. The Tenant should call the Residential Tenancy Branch and speak with an Information Officer if he wants to pursue an administrative penalty.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was partially successful with his claim, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. The Tenant's request to recover the filing fees from an earlier hearing is dismissed. I have no authority to change a previous decision or include the fees from an earlier hearing.

The Tenant has established a monetary claim in the amount of \$1,599.50 comprised of double the security deposit; compensation of one month rent; and the cost of the filing fee.

I grant the Tenant a monetary order in the amount of \$1,599.50. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Tenant's Application for a monetary order for money owed or compensation for damage and loss and for the return of the security deposit was partially successful.

I grant the Tenant a monetary order in the amount of \$1,599.50.

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 13, 2018

Residential Tenancy Branch