



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, FFT

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application). In accordance with section 88 of the *Act*, I find that the landlord is duly served with the Application.

The landlord also acknowledged receipt of the tenant's evidence which was served to him by e-mail. I find that the landlord is duly served with the tenant's evidence pursuant to section 71 (c) of the *Act*, which allows an Arbitrator to find documents sufficiently served for the purposes of the *Act*.

The tenant acknowledged receipt of the landlord's evidentiary package. In accordance with section 88 of the *Act*, I find that the tenant is duly served with the landlord's evidence.

Preliminary Matter

At the outset of the hearing the tenant testified that they have moved out of the rental unit and were no longer disputing the One Month Notice. The tenant submitted that they were still seeking compensation.

The landlord confirmed that the tenant moved out of the rental unit and that they have possession.

As this tenancy is over, the tenant's Application to dispute the One Month Notice is dismissed, without leave to reapply. I will now consider the tenant's monetary claim.

Issue(s) to be Decided

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

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

Background and Evidence

The tenant and landlord agreed that this tenancy began on April 01, 2017, with a monthly rent of \$1,200.00, due on the first day of each month. The tenant and landlord agreed that the landlord the security deposit was used for a half month's rent.

The tenants provided in evidence pictures of the rental unit.

The tenant submitted that they incurred expenses due to being evicted from the rental unit based on the rental unit not being approved by the municipality. The tenant stated that they suffered a loss of \$1,200.00 for moving expenses and various other expenses such as a storage unit, paying people to assist in the move and other unforeseen expenses totalling in the amount of \$6,000.00.

The landlord submitted that the tenant left a bag of garbage on the property and left the rental unit in questionable condition upon vacating.

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.

Regarding the tenant's request for compensation for moving expenses and other expenses incurred due to the eviction, I find that the tenant has not actually provided any evidence that a loss exists. I find that the tenant has not provided any receipts, or any other evidence, to prove the actual amount required to compensate for the tenant's claimed loss.

I further find that the landlord served a One Month Notice, for a reason that is in accordance with the Act and that the tenant has not demonstrated that their claimed loss is due to the actions or neglect of the landlord in violation of the Act, Regulations or tenancy agreement.

For the above reasons I find that the tenant has not demonstrated that they suffered a loss under the act, regulations or tenancy agreement and the tenant's request for compensation is dismissed, without leave to reapply.

Pursuant to section 55 of the *Act*, if the tenant's application to cancel a notice to end tenancy is dismissed, the landlord is entitled to an Order of Possession if the meets the requirements of section 52 of the *Act*. As the landlord did not request an Order of Possession, I do not issue an order of possession to the landlord.

As the tenant was not successful in their application, I dismiss their request to recover the filing fee from the landlord.

Conclusion

The tenant's Application is dismissed in its entirety, without leave to reapply.

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 08, 2018

Residential Tenancy Branch