



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL
 MNDCT, MNSD, FFT

Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not participate in the conference call hearing to present her claim; consequently the landlord's entire application is dismissed without leave to reapply.

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

The tenant testified that on October 25, 2018 she forwarded the tenant's application for dispute resolution and supporting documents via registered mail to the landlord. Based on the testimony of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the application and supporting documents on October 30, 2018, the fifth day after their registered mailing.

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 authorized to obtain a return of all or a portion of the security deposit?

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

Background and Evidence

As per the submitted tenancy agreement and testimony of the tenant, the tenancy began on May 1, 2017 on a fixed term until September 1, 2017 at which time the tenancy was renewed for another fixed term until February 28, 2018. After this time, the tenancy continued on a month to month basis. Rent in the amount of \$1,250.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$625.00 at the start of the tenancy, which the landlord still retains in trust.

The tenant testified that the landlord breached her privacy by way of security cameras, failed to provide her with a mailbox key and prohibited guest parking. The tenant contends that as a result she vacated the rental unit on July 30, 2018 and now seeks the following monetary compensation;

Item	Amount
Moving Expenses	\$787.50
Security Deposit	\$625.00
Total Claim	\$1,412.50

The tenant also seeks to recover the filing fee paid for this application, in the amount of \$100.00.

The tenant testified that she provided her forwarding address in writing to the landlord on August 15, 2018.

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 this case, the onus is on the applicant to prove, on a balance of probabilities, the following four elements:

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 or to repair the damage; 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.

The tenant seeks to recover the cost of moving on the basis that the landlord failed to comply with the *Act*. The tenant did not file an application for an order under section 62 of the *Act* for the landlord's compliance prior to voluntarily vacating the rental unit on July 30, 2018. Accordingly, I find that the tenant chose to move on her accord and failed to mitigate her loss by first filing an application for dispute resolution. Therefore, if the tenant incurred moving costs, which she likely would in any event when moving to a new place, she must bear these costs. The tenant also failed to provide a specific breakdown of the costs charged the rate per hour or the address where the move was completed. I dismiss the tenant's application for moving costs in the amount of \$787.50, without leave to reapply.

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit.

Based on the tenant's undisputed testimony, the landlord received the forwarding address on August 15, 2018. The landlord filed an arbitration application to retain the deposit in time, but did not attend the hearing; therefore the landlord's application to retain the security deposit is dismissed. Based on this, I find the tenant is entitled to recover her security deposit in the amount of \$625.00.

As the tenant was partially successful in this application, I find that the tenant is entitled to recover the \$50.00 of the \$100.00 filing fee paid for the application, for a total monetary amount of \$675.00.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$675.00 against the landlord.

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