



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OT, FFT

Introduction

On June 13, 2018, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* ("the *Act*") for a monetary order for the return of her security deposit, for other tenant issues, and the recovery of the filing fee. The matter was set for a conference call.

The Landlords, the Tenant and the Tenant's Advocate (the "Tenant") attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary matter- *Res Judicata*

At the outset of the hearing, it was brought to this Arbitrator's attention that these parties had two previous Dispute Resolution hearings with the Residential Tenancy Branch. The Landlord testified that there had already been a hearing regarding the security deposit and the June 2018, rent, which the Tenant was applying for in this application. A copy of the previous decisions had been submitted into evidence by the Landlord.

Res judicata is the legal doctrine preventing, the rehearing of an issue that has been previously settled by a decision determined by an Officer with proper jurisdiction.

I have read the previous decisions submitted into evidence by the Landlord, and I find that the principle of *res judicata* bars me from considering the Tenant's application in regard to the return of her security deposit and the recovery of the June 2018 rent. As these matters had already been determined in the final and binding decision dated December 10, 2018.

However, I find that the previous Arbitrators made no determination in regard to the Tenant's claim for the compensation, management services, for painting the rental unit and for loss of quiet enjoyment. Therefore, I will proceed with the remaining two matters before me.

Issues to be Decided

- Is the Tenant entitled to a monetary order for damages or compensation under the *Act*?
- Is the Tenant entitled to the recovery of her filing fee?

Background and Evidence

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

The parties agreed that the tenancy started on January 18, 2018, and that rent of \$1,000.00 was due on the first day of each month. A security deposit of \$500.00 and a pet damage deposit of \$300.00 had been paid to the Landlord at the outset of this tenancy. A signed copy of the tenancy agreement was submitted into evidence by the Landlord.

The parties agreed that the tenancy ended, due to a settlement agreement obtained during a Dispute Resolution proceeding that took place April 30, 2018. It was recorded in the written Decision of that proceeding that the parties agreed that the tenancy would end on June 30, 2018. **It was also recorded in that Decision that,** ~~the parties also~~

~~agreed~~ that the Tenant vacated the rental unit on June 2, 2018. The Landlord provided a copy of the Decision from that proceeding into documentary evidence.

The parties also agreed that there had been a second Dispute Resolution proceeding with a written Decision dated December 10, 2018. The parties agreed that in that Decision the Arbitrator awarded the Landlord a monetary order, that included the security deposit, the pet damage deposit, and rent for June 2018. The Landlord provided a copy of the Decision and Order from that proceeding into documentary evidence.

The Tenant testified that she is seeking compensation in the amount of \$500.00 for the time she spent painting the rental unit and \$1,000.00 for her loss of quiet enjoyment of the rental unit.

The Tenant testified that when she moved into the rental unit, she had asked the Landlord if she could paint. The Tenant testified that she wanted to paint as she believed that she would be living in this location for several years, so she didn't mind putting some work into the place. However, now that the tenancy has ended, so quickly, the Tenant feels that the Landlord should not benefit from her hard work and that she should now compensate her for her time spent painting.

The Landlord testified that she and her daughter had planned on painting the rental unit and had purchased the paint. However, the Tenant had wanted the painting completed sooner than planned by the Landlord, and the Tenant had requested if she could paint while the Landlord and her daughter were out of town. The Landlord testified that she had agreed to let the Tenant go ahead and paint but that the Landlord had never agreed to compensate the Tenant for her labour, as the Landlord had planned to paint the rental unit in her own time.

The Tenant agreed that she had asked to paint the rental unit as she didn't want to wait for the Landlord to complete the painting and that she had used the paint purchased by the Landlord.

The Tenant testified that the Landlord had harassed her throughout her tenancy, which was the reason the tenancy had ended so soon. The Tenant testified that the Landlord would attend the rental unit unannounced and that the Landlord would refuse to leave when she asked her to go. The Tenant provided a 10-minute audio recording of a conversation between her and the Landlord into documentary evidence.

The Landlord testified that she did not harass the Tenant, but that it was the Tenant who was acting inappropriately towards the Landlord. The Landlord provided three video recordings of conversations between her and the Tenant into documentary evidence.

The Landlord testified that the tenancy ended due to a notice to end tenancy that the Landlord had issued the Tenant and the subsequent settlement agreement to end tenancy obtained during the Dispute Resolution proceeding that took place April 30, 2018.

The Parties to this dispute agreed that at the outset of this tenancy they had a verbal agreed that the Tenant would be paid \$100.00 a month to provide property management services to the Landlord.

The Tenant testified that she is claiming for \$100.00 in unpaid property management services for February 2018.

The Landlord testified that she agreed that the first month for property management services was to be February 2018 and that she had not paid the \$100.00 property management fee to the Tenant. The Landlord testified that the Tenant never provided property management services in February 2018 and was therefore not paid for that month. The Landlord testified that there had been a sewer back up in the rental unit as well as a sink and faucet issue, in February 2018, and that the Tenant was absent for both issues and someone else took care of managing these problems. The Landlord testified that as the Tenant did not provide the agreed upon property management services, and she was therefore not entitled to be paid the agreed-upon fee.

The Tenant testified that she agreed that she was out of town due to work and a death in her family for parts of February 2018. The Tenant also testified that she was out of town during the events noted by the Landlord and that she did not provide property management services to the Landlord during those events.

The Landlord testified that she rescinded her offer to the Tenant and advised the Tenant that her property management services were not required.

The Tenant testified that she had received a call from the Landlord, cancelling their agreement for property management services in early March 2018.

Analysis

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

Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In order to determine if an award for compensation is due to the Tenant, I must first determine if there has been a failure to comply with the Act by the Landlord.

I accept the Tenant's testimony that she had painted the rental unit under the understanding that she would be living there for several years. However, I also accept the testimony of the Landlord that there was no written or verbal agreement between them to compensate the Tenant for her time spent painting the rental unit.

I have also read the decisions from the previous hearings between these parties, and I find that this tenancy ended due to a settlement agreement obtained during their first hearing between these parties. Where I can accept the Tenant's testimony that she agreed to the settlement agreement to end the tenancy due to the breakdown of the relationship between her and the Landlord. I find that there was no determination of fault or non-compliance with the Act, by either party to the dispute, in the Arbitrator's written decision from that hearing.

Additionally, during this hearing, I heard contradictory testimony from both parties regarding why this tenancy ended and the nature of the verbal interactions between the Tenant and the Landlord. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim; in this case, that would be the Tenant.

I have reviewed the documentary evidence submitted by the Tenant, including the audio evidence. However, after reviewing this evidence, I find that the parties to this dispute have a comparable level of behaviour toward each. In this case, I find that there is no evidence before me that would put the Landlord more at fault than the Tenant for the breakdown of their relationship, or that the Landlord breach the *Act* during this tenancy.

Therefore, I find that the Tenant has not provided sufficient evidence, to satisfactorily me, that the Landlord had breached the *Act* during her tenancy. In the absence of a breach of the *Act* by the Landlord, I must dismiss the Tenant' claim for compensation.

As for the Tenant's claim for \$100.00 in property management services, I accept the testimony of both parties that there was a verbal agreement for the Tenant to provided property management services to the Landlord. However; I also accept the testimony of both parties that the agreed to property management services were never actually provided by the Tenant to the Landlord. As the Tenant admitted in her testimony that she did not provided the services that she is claiming for, I must dismiss the Tenant's claim for \$100.00 in property management services fees.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in her application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this hearing.

Conclusion

I dismiss the Tenants application 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: December 20, 2018

Residential Tenancy Branch

Date of Correction and Clarification: January 10, 2019