



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") 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 double the value of the security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords, landlord DM ("landlord") and "landlord KM," and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 61 minutes.

The landlords confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that both landlords were duly served with the tenant's application and the tenant was duly served with the landlords' written evidence package.

At the outset of the hearing, both parties agreed that a different Arbitrator at a previous RTB hearing on September 13, 2018, dealt with the tenant's security and pet damage deposits and the doubling provision under section 38 of the *Act*. The file number for the previous hearing appears on the front page of this decision. I notified both parties that the tenant's double security and pet damage deposits claim of \$2,800.00 was *res judicata*, meaning it had already been decided and that I could not deal with that claim at this hearing. Both parties confirmed their agreement and understanding of same.

I notified both parties that I would only be proceeding with this hearing to decide the tenant's monetary claim for \$1,767.67 plus the \$100.00 application filing fee.

Issues to be Decided

Is the tenant entitled to a monetary award 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?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 30, 2016 and ended on May 31, 2018. Monthly rent in the amount of \$1,400.00 was payable on the first day of each month. The rental unit is the basement of a house, where the landlords lived upstairs.

The tenant seeks a monetary order of \$1,767.67 plus the \$100.00 application filing fee.

The tenant seeks \$80.00 for an illegal rent increase. She claimed that she agreed to pay \$65.00 for utilities to the landlords each month, as per a verbal agreement. She said that the landlords arbitrarily increased the utilities by \$5.00 each month to a total of \$70.00 per month. She seeks a refund of \$5.00 per month for 16 months, for a total of \$80.00. She stated that the landlords did not provide 30 days' notice for the increase and that it was a rent increase, not a utilities increase. She explained that she agreed to pay the increase to the landlords because she "did not want to rock the boat" at that time during her tenancy.

The landlords dispute the tenant's claim. The landlord testified that electricity and heat were not included in the tenant's rent, the tenant's hydro bill went up three times, the landlords offered for the tenant to view the hydro bills while they explained it, they requested an increase of utilities of \$4.92 per month, and the tenant agreed to pay this.

The tenant seeks a refund of \$65.00, instead of \$70.00, for the utilities she paid to the landlords for May 2018. She accounted for the extra \$5.00 in the rent increase claim above. She said that the landlord came into her rental unit and turned her heat off for a portion of the day on May 16, 2018 and while she was out of town from May 17 to 21, 2018. She said that there is no meter to measure the utilities so she did not know the heat usage during this six-day time period and she wanted the entire month of utilities back.

The landlords dispute the tenant's claim. The landlord said that she did not turn the tenant's heat off, she just turned it down from 26.5 degrees to 20 degrees. She claimed that she was showing the rental unit to other people and it was too hot inside, given the outside the weather. She maintained that the tenant was using higher utilities and paying more for it, so she was trying to help her conserve it.

The tenant seeks a loss of quiet enjoyment for \$1,470.00 (which she said was for one month's rent and utilities) and lost wages of \$147.67. She said that the landlords allowed her to have a cat in the rental unit, even though they advertised the unit for no pets. She said that the landlords complained about the smell of cat urine in the rental unit, she made efforts to control the litter and smell, and her own witnesses could not smell it. She claimed that the landlord came in to give her cat insulin and then began complaining about the way the tenant did things in the unit, like whether the windows and blinds should be open. She explained that the landlords intruded on her personal space, complained about her cleanliness, entered her rental unit without notice or permission, turned her heat off while her cat was still inside, and their dogs would bark at any sound even when the tenant's friends were over.

The tenant said that she asked the landlords for quiet time between 11:00 p.m. and 7:00 a.m., so that they could not walk above her bedroom with their shoes on. She stated that the landlords knew she went through a relationship break-up. She maintained that the landlords made her uncomfortable by commenting on her sex life and their own sex life, and made comments about the tenant's clothing and physical appearance. The tenant provided witnesses statements but her witnesses did not show up to this hearing. She provided a medical document from her doctor, stating that she took one day off work, recommending anti-anxiety medications, and noting the tensions with the landlords. She provided a document from her employer indicating that she took two days off work and it was worth \$147.67 in lost wages. She also provided some video surveillance showing the landlord entering her rental unit through the laundry room entrance, left the door unlocked when she left, checked the heat, made sure it was turned off, and then went around securing the windows. She said that the landlord

admitted in her own evidence that she went inside the rental unit to make sure the heat was turned off.

The landlords dispute the tenant's claim. The landlord said that the tenant provided conflicting evidence. She claimed that she told the tenant before she moved in, that the landlords had two dogs and they bark. She stated that she accepted the tenant's cat in the unit, despite worrying about pet damage. She explained that the tenant's cat urine smell was coming into the landlords' unit, through the furnace and vents, because the tenant only cleaned the cat litter once per week. She said that the landlords were required to put a plastic cover over the door in the laundry room to prevent the strong cat urine smell from entering their unit. The landlord said that the landlords were open with the tenant about their relationship and sex because they used to talk about everything together, they were not preying on the tenant. She stated that the tenant caused the landlords a loss of quiet enjoyment, they missed time from work, their family and their dogs, that the tenant made malicious comments and accusations towards them, they had stress and used anti-depressants, and the tenant made frivolous complaints. She maintained that the tenant raised these issues after she moved out, rather than while she was living there. The landlord questioned the tenant's witness letters, stating that all of the witnesses said that they had known the tenant for over two years, when it was less time for one witness FF, and that there were not several incidents but only one, since the witness only met the landlord once.

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 applicants to establish the claim. To prove a loss, the tenant 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 landlords 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 tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

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

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

Section 28 of the Act deals with a tenant's rights to quiet enjoyment:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

I find that the tenant is entitled to \$300.00 in nominal damages from the landlords for a loss of quiet enjoyment. The tenant was unable to properly substantiate the amount of \$1,470.00 for a loss of quiet enjoyment and \$147.67 for lost wages. Her medical note indicates that she only took one day off from work, not two, does not indicate the cost of her medications taken if any, and does not equate to one month of rent and utilities, while the tenant was living inside the rental unit for the entire month.

However, I find that the tenant's legal rights under sections 28, 29 and 30 of the Act and sections 24 and 25 of the Regulation were violated. I find that the tenant provided sufficient testimonial and digital video evidence that the landlord entered her rental unit on multiple occasions without notice and permission, that her heat was turned down, and the laundry door was left unlocked. The landlord admitted she went into the rental unit and turned the heat down, while the tenant was away. I find that the tenant suffered losses, which affected her medically, due to the landlord's illegal actions.

As the tenant was mainly unsuccessful in this application, I find that she is not entitled to recover the \$100.00 application filing fee from the landlords.

Conclusion

The tenant's application for a return of double the amount of the security and pet damage deposits of \$2,800.00 is *res judicata*.

I issue a monetary order in the tenant's favour in the amount of \$300.00 against the landlords. The landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenant's application is dismissed 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: January 2, 2019

Residential Tenancy Branch