



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on January 3, 2019. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for compensation for loss or other money owed; and,
- Recovery of the cost of the filing fee.

The Tenant attended the teleconference hearing; however, the Landlord did not. The Tenant testified that she served the Landlord with her application package and evidence by registered mail on September 4, 2018, and November 30, 2018, respectively. Pursuant to section 88 and 90 of the Act, I find the Landlord is deemed to have received these packages on September 9, 2018, and December 4, 2018, respectively, the fifth day after their registered mailing.

The Landlord failed to attend and present their evidence. As such, the only evidence properly before me is the documentary evidence and testimony from the Tenant.

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.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The Tenant stated that the tenancy started on July 15, 2018, and ended on August 29, 2018, the day she left the rental unit. The Tenant stated that monthly rent was \$1,000.00, and was due on the 15th of each month. The Tenant stated that she was responsible for 1/3 of the utility bills and there was only a verbal tenancy agreement. The Tenant stated that she gave the Landlord \$500.00 as a security deposit.

The Tenant is seeking compensation because she stated she had to leave the rental unit due to harassment from the Landlord. The Tenant stated that the Landlord was aggressive and abusive towards her and her son, and would yell and scream at them on a daily basis. The Tenant stated that it got so bad that her son went and stayed somewhere else because being in the environment was too stressful for him. The Tenant stated that she tried to put some of her concerns with the rental unit in writing, but the Landlord would rip up the letters, and verbally berate her. The Tenant stated that she only lived in the rental unit for about 45 days and had to leave because of the stressful living environment caused by the Landlord.

The Tenant stated that she paid \$1,000.00 in rent for July 15th – August 14th, and another \$1,000.00 for rent for August 15 – September 15. The Tenant stated that after realizing she had to move out of the rental unit for her own sanity and safety, she negotiated with the Landlord's agent (daughter). The Tenant provided a copy of the agreement they reached which was signed and dated August 15, 2018. It specifies that the Landlord would provide rent back to the Tenant if she was able to move out before September 15, 2018. The agreement also specifies that the Landlord would return the security deposit in full if the rental unit was left in the same condition. The Tenant specifies that the rental unit was substantially cleaner and better off than when she moved in.

The Tenant stated that the Landlord paid her \$827.00 when she moved out but the Tenant was not sure how this amount was calculated. The Tenant accepted and cashed the cheque, and also got another \$65.00 in cash from the Landlord's agent (daughter) but the Tenant was also unable to explain what this amount was for. In total, the Tenant

stated that she received \$892.00 from the Landlord at the end of the tenancy, but was not sure how the Landlord came up with this amount.

The Tenant stated that the pro-rated rent amount was \$32.25 (\$1,000.00/ 31 days) and that, as per the written agreement she made with the Landlord's agent at the end of the tenancy, she should have received rent back in the amount of \$548.25 (17 days of rent), since she left early. The Tenant also stated that the agreement was for the return of the \$500.00 security deposit, so the Tenant should have received \$1,048.25, as they agreed upon. However, the Landlord only gave her a cheque for \$827.00 plus \$65.00 cash from the Landlord's agent. The Tenant stated that the reason the Landlord didn't give back the full amount was because the hydro bill arrived and the Landlord wanted to deduct what the Tenant owed. The Tenant noted that the amount she was owed as per the written agreement (\$1,048.25) was more than what she got back (\$827.00) by \$221.00. The Tenant stated that this equates to an overpayment of utilities, because \$221.00 is more than 1/3 of the bill, which was \$345.79.

The second portion of the Tenant's claim was for a loss of quiet enjoyment for the 1.5 months she was living in the rental unit. As stated above, the Tenant stated she was severely disrupted and pushed out of the rental unit by the dysfunctional and aggressive behaviour from the Landlord. The Tenant stated that she is looking for \$1,000.00 in compensation due to her loss of quiet enjoyment.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the

Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

Utility Overcharge

First, I turn to the Tenant's request to be compensated for utility bills she overpaid. On the Tenant's application, she stated that she should get \$221.00 back for "utility overcharge" because the Landlord only returned \$827.00, when she should have returned \$1,048.00. However, I note the Tenant has not provided a proper copy of the utility bill, showing the full particulars (name, address). It is difficult to accurately determine if this is the correct amount, address, name, and billing period, such that I would be able to determine what was owed and by who. Further, I note the Tenant is seeking an amount for utility overpayment that does not take into account the \$65.00 she says she also received along with the \$827.00. The Tenant also failed to provide a monetary worksheet to help explain this scenario. Ultimately, I find the Tenant's testimony and evidence lacks internal consistency and reliability in that not all amounts she received were reflected in the amount she is seeking. I find the Tenant's lack of clarity around the utility payments is detrimental to this portion of her claim. As such, I dismiss her claim for recovery of the utility "overcharge".

Loss of Quiet Enjoyment

The second portion of the Tenant's claim for compensation is for loss of quiet enjoyment. Section 28 of the Act, states that 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;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I turn to the following two Residential Tenancy Branch Policy Guidelines:

The Residential Tenancy Branch Policy Guideline #16
(Compensation for Damage or Loss)

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- *Loss of access to any part of the residential property provided under a tenancy agreement;*
- *Loss of a service or facility provided under a tenancy agreement;*
- ***Loss of quiet enjoyment;***
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and,*
- *Damage to a person, including both physical and mental*

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.

The Residential Tenancy Branch Policy Guideline # 6
(Entitlement to Quiet Enjoyment)

A Landlord is obligated to ensure that the Tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

I have considered the undisputed testimony and documentary evidence from the Tenant and I accept that the Landlord significantly disrupted the Tenant. I find the Landlord's actions (yelling, swearing, threatening and aggressive behaviour) on a daily basis had a significant impact on the Tenant's ability to feel safe and secure in the rental unit. That being said, I note that the Tenant still had access and use of the entire rental unit for the

duration of the tenancy, despite it being an unpleasant experience, as she has asserted. I find the Landlord breached the Act by failing to provide a rental unit free from unreasonable disturbance, and I find the Tenant is entitled to compensation for her loss of quiet enjoyment of the rental unit. However, I find the Tenant's request for \$1,000.00 is excessive. I note the Tenant only paid approximately \$1,548.39 in rent (after taking into account the pro-rated rent refund the Landlord gave the Tenant) over the duration of her tenancy, which only lasted about a month and a half. I find a more reasonable amount is 33% of the rent she paid over the material time, which amounts to \$516.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since Tenant was largely successful for the majority of her claim. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make this application for dispute resolution.

In summary, and pursuant to section 67 of the Act, I grant the Tenant a monetary order for **\$616.00**, as specified above.

Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of **\$616.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 4, 2019

Residential Tenancy Branch