



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT OLC**

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- A monetary award for damages and loss pursuant to section 67;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Recovery of the filing fee from the landlord pursuant to section 72.

Both parties attended, represented by counsel, and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the other’s materials. Based on the testimonies I find that all documents were served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the tenant made an application requesting to amend the monetary amount of their claim. The tenant said they are seeking additional interest on the monetary award for a return of funds. As I find that interest accruing is reasonably foreseeable, in accordance with section 64(3)(c) of the Act and Rule 4.2 of the Rules of Procedure, I allow the landlord to increase the monetary claim from \$6,816.00 to \$7,256.64..

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

This tenancy commenced on March 1, 2018. The monthly rent is \$4,100.00 payable on the first day of each month. The tenant had the landlord's permission to operate a short-stay AirBnB accommodation business out of the rental property.

In May 2018, the landlord collected from the tenant the amount of \$816.00 for insurance for the property. The parties agree that the funds were not used to purchase insurance and was returned in full to the tenant in February 2019. The tenant submits that the landlord did not provide the tenant with a receipt for the payment nor were they provided with an explanation of what use was made of the funds. The tenant acknowledges that the funds were returned prior to the hearing but submit that the landlord unreasonably held the amount until the present application was filed. The tenant says that the landlord did not provide a reasonable explanation for the delay in either returning the funds or confirming that it was used for purchasing insurance as intended. The tenant seeks a monetary award in the amount of \$440.64, interest calculated at 6% on \$816.00 from May 2018 to the date of the hearing. The tenant submits that the interest is reasonable as the funds could have been used by the tenant had they not been paid to the landlord.

The landlord submits that the funds were intended to be used to purchase insurance for the property but there were difficulties arising due to the name on the business license for the property. The landlord says that the tenant was made aware of the difficulties throughout the process.

The parties agree that there have been several other hearings regarding this tenancy under the file numbers on the first page of this decision. The earlier hearings dealt with the landlord's issuance of Notices to End Tenancy and an application for an early end of the tenancy. The tenant characterizes the earlier attempts by the landlord to end the tenancy as frivolous and vexatious and part of a systematic campaign of harassment. The tenant points to the fact that the earlier Notices to End Tenancy were set aside as evidence that the landlord's attempts to end the tenancy were baseless. The tenant submits that they incurred \$4,000.00 in legal fees for retaining counsel to assist with responding to the landlord's notices.

The tenant submits that in August 2018 the landlord induced some AirBnB guests who were staying at the rental property to leave. The tenant submits that as a result of the guests leaving and the negative reviews they were unable to rent out the property and suffered a loss of income of \$2,000.00.

The tenant characterizes the interactions with the landlord as a systematic series of intimidation and harassment and seeks an order that the landlord refrain from their conduct violating the *Act*, regulations or tenancy agreement. The tenant also submits that they believe that the landlord may have other tenants to whom they are acting aggressively and seek an order generally in the public interest to prohibit the landlord from violating the *Act*. The tenant said that they have no evidence that the landlord owns or manages other properties or that there has been a violation of other tenancy agreements.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

The tenant seeks a monetary award of \$7,256.64 for the following items:

Item	Amount
Repayment of Insurance	\$816.00
Interest on Insurance Payment	\$440.64
Legal Fees	\$4,000.00
Loss of Income	\$2,000.00
TOTAL	\$7,256.64

The parties agree that the payment of \$816.00 has been returned in full. Accordingly, I find that there is no basis for an award of repayment of an amount that has already been returned and dismiss this portion of the claim.

The tenant submits that interest at a rate of 6% on the principal amount of \$816.00 for the period from May 2018 to when the funds were returned in January 2019 is appropriate. I find that there is insufficient evidence in support of this portion of the tenant's claim. The evidence is that the tenant agreed to pay the amount in order to obtain proper insurance for the rental property. Due to irregularities with the names on the business license and tenancy agreement the parties were ultimately unable to obtain the insurance. I find that the delay in obtaining the insurance or repaying the funds do not amount to a violation of the *Act*, regulations or tenancy agreement.

Furthermore, I find that the tenant has not provided sufficient evidence to show that they have suffered any loss due to the delay in return of the funds. The tenant submits that 6% is a reasonable interest rate as the payment was borrowed against their credit card which charges a higher rate but I find that there is insufficient evidence that they borrowed against their credit card or that they have suffered any losses in the amount claimed. Consequently, as the tenant has not met their evidentiary burden I dismiss this portion of the application.

I find there is insufficient evidence in support of the tenant's claim for legal fees. The tenant has not submitted invoices or receipts showing the amount of the fees paid for legal advice and representation to be \$4,000.00 as claimed. In any event, I find that the costs of legal fees are not losses attributable to the violation of the landlord. Simply because the landlord's Notices to End Tenancy or applications were unsuccessful at a hearing does not mean that the landlord was in violation of the *Act* by commencing a claim. I do not find the tenant's claim that they have been a target of systematic harassment and abuse to be supported in the materials. A landlord is at liberty to issue Notices to End Tenancy or commence applications if they believe that there is a factual basis. Based on the materials I find that the earlier Notices and application were not a frivolous process conceived with no evidentiary basis. I find that there has been no violation by the landlord, and that the tenant has failed to show that they have suffered losses in the amount claimed. Accordingly, I dismiss this portion of the tenant's application.

I find that there is insufficient evidence in support of the tenant's application for loss of income. While the tenant alleges that they were unable to find renters for a time due to the interference of the landlord I find that there is insufficient evidence linking their loss to the actions of the landlord. In addition, I find that there is little evidence to show that the amount of \$2,000.00 is the actual amount of losses suffered. I find that the tenant has not met their evidentiary burden of showing on a balance of probabilities that they

have suffered losses as a result of the landlord or that the quantum of losses is as claimed. Therefore, I dismiss this portion of the tenant's application.

The tenant said that they believe that the landlord may be breaching the Act generally in relation to tenancy agreements the landlord may have with other renters. The tenant testified that they have no evidence that the landlord is a party to other tenancy agreements or that there have been violations. I find that there is no evidence in support of this portion of the tenant's application seeking an order that the landlord comply and dismiss it accordingly.

As the tenant's application was unsuccessful the tenant is not entitled to recover the filing fee.

Conclusion

The tenant's application is dismissed in its entirety without leave to rapply.

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: February 8, 2019

Residential Tenancy Branch