



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT RPP

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order that the landlord return the tenant's personal property; and to recover the filing fee from the landlord for the cost of the application.

The hearing did not conclude on the first day scheduled, and was adjourned to allow the tenant an opportunity to be heard with the benefit of a translator, and to allow the tenant to provide proof that the landlord was served with the hearing package.

The tenant attended the hearing on the second scheduled date with a translator. However, the landlord did not attend on either scheduled date. The tenant testified that the landlord was served with the tenant's application and notice of this hearing by registered mail on October 4, 2018, but lost the receipt. In an effort to ensure that proof of service could be provided, the tenant re-sent the hearing package to the landlord on February 4, 2019 and was permitted to upload proof of such service after the hearing had concluded. I have now received that evidence.

I am satisfied that the landlord was served with the hearing package sent on October 4, 2018 in accordance with the *Residential Tenancy Act*, considering the evidentiary material and the affirmed testimony of the tenant. I am also satisfied that the landlord was provided with notice of this second hearing by the Residential Tenancy Branch. I am also satisfied that the landlord was served a second time by registered mail on February 4, 2019.

The tenant gave affirmed testimony, and the translator was affirmed to well and truly interpret the proceedings from the English language to the tenant's Native language and

from the tenant's Native language to the English language to the best of the translator's skill and ability.

All testimony and evidence provided by the tenant is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for reimbursement of rent paid?
- Has the tenant established that the landlord should be ordered to return personal property to the tenant?

Background and Evidence

The tenant testified that this fixed-term tenancy began on July 31, 2018 and was to revert to a month-to-month tenancy after 3 months. Rent in the amount of \$900.00 per month was payable, however since the tenant didn't actually reside in the rental unit until sometime in mid-August, 2018 the landlord collected \$700.00 for the first month. The tenant paid all of the rent, being \$700.00 for August and \$900.00 for each of September and October, 2018, for a total of \$2,500.00 on August 1, 2018 and a copy of a receipt signed by the landlord has been provided for this hearing. No security deposit or pet damage deposit had been collected by the landlord. The rental unit is a room in a house occupied by the landlord and the landlord's 2 adult children, and the landlord was not the owner.

On August 29, 2018 the landlord told the tenant that the landlord and family, as well as the tenant had to move out immediately, however the tenant did not understand why. The landlord offered to rent a room to the tenant at the landlord's new place of residence but the tenant declined because of the location and condition of the room. The landlord agreed in writing to return \$1,800.00 to the tenant, and a copy has been provided for this hearing, as well as a video showing the landlord signing the document.

The tenant has provided a Monetary Order Worksheet setting out the following claims:

- \$1,800.00 for recovery of September and October, 2018 rent;
- \$80.00 for a guest house stay by Airbnb during August 29 and 30, 2018;

- \$300.00 for a guest house stay during August 30 to September;
- \$500.00 for moving expenses; and
- \$2,000.00 for compensation.

The tenant has not provided a receipt for moving expenses or for the guest house stay for August 30 to September, 2018. A receipt for the August 29 Airbnb guest house has been uploaded to the automated system by the tenant, however I was not able to open it.

Analysis

Firstly, I have reviewed the document signed by the landlord promising to return \$1,800.00 to the tenant for rent paid for the months of September and October, 2018. It is clear to me that the landlord acknowledged owing that amount of money to the tenant.

Where a landlord and tenant enter into a tenancy agreement, whether or not it is in writing, the landlord may only end the tenancy by a written mutual agreement or by giving the tenant notice in the approved form for unpaid rent or utilities, or for cause, or for landlord's use of property. In this case, no written agreement to end the tenancy was signed, and no notice was given to the tenant. The tenant claims moving expenses and general damages.

The *Act* also provides that where a landlord breaches the *Act* or the tenancy agreement causing financial hardship or further expenses to a tenant, the landlord may be ordered to provide compensation. Also, where a landlord ends a tenancy for landlord's use of property, a landlord must provide compensation equivalent to one month's rent, which is generally considered to be the amount of moving expenses. The landlord must give notice in writing, and in the case of ending a tenancy for landlord's use of property, that requirement is 2 months' notice. Since the tenancy did not end for unpaid rent or utilities, or for cause, I find that the tenant has established general damages in the amount equivalent to 2 months' rent, or \$1,800.00 inclusive of moving expenses, general damages and the costs of staying at guest houses after the landlord told the tenant that they all had to move out.

The tenant did not lead any evidence with respect to the application for an order that the landlord return the tenant's personal property, and I dismiss that portion of the tenant's application.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the tenant's application for an order that the landlord return the tenant's personal property is hereby dismissed.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,700.00.

This order is final and binding and may be enforced.

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 14, 2019

Residential Tenancy Branch