



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RESTACON SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNDCT

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlords acknowledged receipt of evidence submitted by the tenant. The landlords did not provide any documentation for this hearing. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary award for loss or damages arising out of this tenancy?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenants' testimony is as follows. The tenancy began on June 1, 2015 and ended on November 30, 2016. The tenant was obligated to pay \$800.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$400.00 security deposit and \$100.00 pet deposit that has been returned to her. The tenant testified that the

home was uninhabitable due to rats, poor electrical system, lack of working laundry and lack of drinking water. The tenant testified that the landlords did not address her issues. The tenant testified that she was suffering from a brain tumor and was hoping that this home would help rest and heal her. The tenant testified that her experience was extremely negative and difficult for her health. The tenant testified that she is seeking as much money as she can get to pay for her debts.

The tenant is applying for the following:

| | | |
|-----|--------------------------------|---------------------|
| 1. | Double the deposits | \$500.00 |
| 2. | Aqua Terra Water | 720.00 |
| 3. | Coinamatic Laundry | 884.00 |
| 4. | BC Hydro | 1277.82 |
| 5. | Moving and Storage | 2192.81 |
| 6. | Patio Set | 150.00 |
| 7. | Vet Bill | 91.88 |
| 8. | Rent Refund for 17 Months | 13600.00 |
| 9. | Costs to keep second apartment | 8799.00 |
| 10. | Filing Fee | 100.00 |
| 11. | | |
| 12. | | |
| 13. | | |
| 14. | | |
| 15. | | |
| 16. | | |
| 17. | | |
| | Total | \$28, 315.51 |

TW gave the following testimony. TW testified that the landlords adamantly dispute the tenants claim in its entirety. TW testified that the tenant did not advise of any issues for the first 16 months of her tenancy. TW testified that the tenant only advised of some electrical issues during month 17; the last month of the tenancy. TW advised that all issues were corrected by the end of month 17. TW testified that the parties were on a month to month agreement and that if the home was as horrible as alleged, why didn't the tenant move out, especially since she had been continuing to rent another location. TW testified that the tenants' application is without merit and no money should be awarded to her.

Analysis

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

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the tenants' claims and my findings as follows.

Security and Pet Deposit – \$500.00

The tenant testified that she provided her forwarding address in writing to the landlord when she gave notice to move out, the landlord confirmed that. The tenant testified that she vacated the unit on November 30, 2016 but did not receive the cheque until December 19, 2016. The tenant is seeking the doubling provision under section 38 of the *Act*. The landlord disputes this claim. The landlord testified that she mailed out the cheque on December 13, 2016 and "cant' control the mail". Section 38 and 90 of the *Act* addresses the issue before me as follows:

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

When documents are considered to have been received

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*], unless earlier received, is deemed to be received as follows:

(a) if given or served by mail, on the 5th day after it is mailed;

Based on the landlords' own testimony, I find that they did not return the deposit within 15 days as required as it would have been deemed received on December 18, 2016 and therefore were in breach of section 38 of the Act. I find that the tenant is entitled to the doubling provision minus the previous amount she has already received for an award of \$500.00.

Aquaterra - \$720.00

The tenant testified that the home did not have drinking water and that she incurred the cost of buying bottled water. The landlord disputes this claim. The landlord advised that this was explained to the tenant in great detail at the outset of the tenancy. The landlord testified that this is a rural part of the province and that no one drinks the tap water. The landlord advised that she lives about a kilometer away and that she buys bottled water as well. The landlord testified that this particular property is a five acre area that is one third swamp land. The landlord testified that the water table is very unstable due to the swamp and farm animals throughout the region. The landlord testified that the tenant did not have any issue with this until October 2016. As noted above, to be successful for a monetary award under section 67 of the Act, the applicant must satisfy all four factors,

the tenant has failed to show that she mitigated the problem. The tenant has not provided sufficient evidence to show that she made the landlord aware of this as soon as it was reasonably possible; as a result, I dismiss this portion of her application.

Coinamatic \$884.00

The tenant testified that the water was brown and sludge like and that she couldn't wash her clothes. The tenant also advised that the dryer was not vented and that it had a burning smell to it when she used it. The tenant testified that she had to do her laundry offsite and that she should be compensated for the gas to go to another location and the cost for the coin laundry. The landlord testified that there was some electrical issues with the dryer, but those were corrected after the tenant had the Safety Authority inspect it. The landlord testified that this was not brought to their attention until the end of the tenancy as was the washer issue. The landlord advised that both issues were corrected in a timely fashion by the end of the tenants' tenancy. As noted above, to be successful for a monetary award under section 67 of the Act, the applicant must satisfy all four factors, the tenant has failed to show that she mitigated the problem. The tenant has not provided sufficient evidence to show that she made the landlord aware of this as soon as it was reasonably possible; as a result, I dismiss this portion of her application.

BC Hydro - \$1277.82

The tenant testified that she was told the hydro was going to be about fifty dollars a month but over her tenancy it was well over \$2000.00. The tenant "thinks" that because of the electrical issues, her bill was higher than it should have been and seeks the difference of what she should have paid versus what she did pay. The landlord testified that what the tenant used was her choice as she had full control of the heating. The landlord testified that the tenant failed to let her know of the issue until the end of the tenancy. Again, as mentioned above, the tenant has failed to provide sufficient evidence to show that she mitigated the issue, accordingly; I dismiss this portion of her application.

Patio Set \$150.00

The tenant testified that the landlord dumped broken concrete, rebar and debris all over her patio set that she had bought at a recycling store. The tenants photo of the alleged "dumping" was very poor and not helpful. In addition, the tenant did not actually see the landlord dump any debris. Based on the insufficient evidence before me, I dismiss this portion of the tenants' application.

Vet Bill - \$91.88

The tenant testified that her cat developed a skin rash. The tenant "thinks" that a rat bit her cat. The tenant provided speculation and was not actually sure as to what caused

the cat's rash. Based on the insufficient evidence before me, I dismiss this portion of the tenants' application.

Moving and Storage – \$2,192.81, Full Rental Return for 17 month tenancy \$13,600.00, & Costs to keep another apartment rented \$8,799.00.

The tenant testified that she would not have incurred moving costs and the costs of another rental if the unit was habitable. The tenant testified that the unit was in such bad condition "it's one of the worst places of I've ever rented". The landlord submits that the tenant was free to leave at any time and that she did not have the challenges of other renters as she had another place already paid for that she could return to. The landlord testified that the tenant only began making comments about the poor condition of the after she had given notice and that the tenancy was almost at an end. As noted several times in this decision, the tenant failed to mitigate the situation. The tenant failed to provide sufficient evidence to show that they were reporting issues as they arose in a reasonably timely fashion. I find that the tenant has failed to do that and therefore I must dismiss this portion of the tenants' application.

As the tenant has had most of her application dismissed, she is not entitled to the recovery of the filing fee and she must bear that cost.

Conclusion

The tenant has established a claim for \$500.00. I grant the tenant an order under section 67 for the balance due of \$500.00. This order may be filed in the Small Claims Court and 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: March 21, 2019

Residential Tenancy Branch