



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, MNDCT, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for dispute resolution, made on January 14, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to restrict or suspend the Landlord's right to enter;
- an order that the Landlord comply with the Act, Regulation, or Tenancy Agreement;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time, each provided affirmed testimony.

The Tenant testified that she served the Landlord with the Application package in person on January 14, 2019. In addition, the Tenant stated that she served the Landlord with her documentary evidence via text message on February 22, 2019 prior to the hearing. The Landlord confirmed receipt of both packages. The Landlord submitted documentary evidence in response to the Application via email. The Tenant confirmed receipt.

According to the Residential Tenancy Branch Rules of Procedure 3.14 (the "Rules of Procedure"); documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing.

Rules of Procedure 3.17; indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing.

Furthermore, Section 88 of the *Act* allows for documents, other than those referred to in section 89, that are required or permitted under this *Act* to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator

At the start of the hearing, it became apparent that neither party served their evidence package in accordance with section 88 of the *Act*. Also, the Tenant failed to serve the Landlord with her documentary evidence no later than 14 days prior to the hearing. No issues were raised during the hearing with respect to service and receipt of the above documents. Both parties expressed that they wanted to continue with the hearing in lieu of an adjournment. Accordingly, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Preliminary and Procedural Matters

At the start of the hearing, the parties testified and agreed that the tenancy had ended on January 1, 2019. Seeing as the tenancy is over, the Tenant's claims for; an order to restrict or suspend the Landlord's right to enter; and an order that the Landlord comply with the Act, Regulation, or Tenancy Agreement are now moot. As a result, the Tenant agreed to withdraw these claims from her Application.

Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Is the Tenant entitled to an order granting the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy started on February 28, 2018 and ended on January 1, 2019. During the tenancy, rent in the amount of \$2,100.00 was paid to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,050.00 which the Landlord continues to hold.

The Tenant testified that she is seeking a monetary order in the amount of \$35,000.00 stemming from a cockroach issue which damaged all her belongings contained in the rental unit. The Tenant is also seeking the return of rent in the amount of \$2,100.00 for each month that she resided in the rental unit. Lastly, the Tenant is seeking the return of her security deposit in the amount of \$1,050.00.

The Tenant testified that she began to notice the presence of cockroaches in her rental unit two weeks after moving in. The Tenant stated that she notified the Landlord of the issue immediately. The Tenant stated that the Landlord responded by stating that the rental unit had recently been sprayed for insects by an exterminator which should eliminate the presence of the insects.

The Tenant indicated that the problem continued and that all her possession needed to be discarded at the end of the tenancy as a result. The Tenant further indicated that the rental unit contained mould in the bathrooms, kitchen, and bedroom. The Tenant stated that she texted the Landlord at the end of March 2018 to express her concerns about

the mould issue. The Tenant testified that a cockroach went into her ear, which required medical attention as a result.

The Tenant stated that she wishes to be reimbursed the full amount of rent paid to the Landlord throughout the entire duration of the tenancy in the amount of \$2,100.00.

Lastly, the Tenant testified that she has not yet received her security deposit and is wishing the return of \$1,050.00. The parties agreed that the Tenant has not yet provided the Landlord with her forwarding address in writing.

In response, the Landlord testified that the Tenant had not expressed concerns regarding the presence of cockroaches during her tenancy. The Landlord testified that she hired a pest control company to exterminate the cockroaches in the rental unit prior to the Tenancy taking possession of the rental unit. The Landlord indicated that the Tenant was made aware of the cockroach issue prior to moving in. The Landlord testified that she followed up with the Tenant on March 22, 2018 to see if there was any evidence of the cockroaches returning. The Landlord stated that she did not get a response from the Tenant. The Landlord provided a copy of this communication in support.

The Landlord booked a follow up visit on May 15, 2018 for the pest control company to conduct another treatment to the rental unit which had been recommended by the company. The Landlord stated that she did not receive any complaints from the Tenant until after the Tenancy ended. The Landlord testified that she received a message from the Tenant on January 3, 2019 following the end of the tenancy, stating that she required medical attention after a cockroach went into the Tenant's ear.

The Landlord denies any mould issues in the rental unit and indicated that the Tenant had never made any mention to the Landlord about mould in the rental unit.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

In relation to the monetary compensation sought by the Tenants, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. Pursuant to the Residential Tenancy Policy Guideline #16 (the “Policy Guidelines”) 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 what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or 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 Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

According to the Residential Tenancy Branch Rules of Procedure 2.5 (the “Rules of Procedure”); documents that must be submitted with an Application for Dispute Resolution include a detailed calculation of any monetary claim being made.

In this case, the Tenant has made an Application seeking a monetary order in the amount of \$35,000.00. I find that the Tenant has not provided a detailed calculation of the monetary claim being made. The Tenant has not provided any evidence to prove the existence of the damage or loss, and that the damage or loss stemmed directly from a violation of the *Act*. I also find the tenant had insufficient evidence to prove that she informed the Landlord of the alleged issues she had with the rental unit, despite the Landlord making such an enquiry. Therefore, I find the Tenant has insufficient evidence that the Landlord breached the *Act*.

If the Landlord had breached the *Act*, I find that the Tenant has not provided any evidence that can verify the value of the loss or damage relating to the claim. Lastly, the Tenant did not demonstrate that she did what was reasonable to minimize the damage or loss that she is claiming.

In relation to the Tenant seeking the return of her security deposit, Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later.

I accept that the parties agreed that the Tenant has not yet provided the Landlord with her forwarding address in writing, therefore the Tenant's Application for the return of the security deposit is premature.

For these reasons, I dismiss the Tenant's Application without leave to reapply.

Seeing as the Tenant was not successful in their Application, the Tenant is not entitled to the return of the filing fee.

Conclusion

I dismiss the Tenants' Application for a monetary order for compensation, 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: March 19, 2019

Residential Tenancy Branch