



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the tenant and the tenant's English language translator ("tenant's translator") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that her agent had permission to assist her with English language translation at this hearing. This hearing lasted approximately 65 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and amendment increasing the monetary claim. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and amendment.

The landlord stated that he did not receive the tenant's e-transfer emails. The tenant claimed that she sent the emails by registered mail to the landlord on February 26, 2019. She provided a Canada Post receipt and tracking number with her application. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's e-transfer receipts on March 3, 2019, five days after its registered mailing.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the spelling of the landlord's first name. Both parties agreed to this amendment during the hearing.

Preliminary Issue –Inappropriate Behaviour by the Tenant and the Tenant's Translator during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

At the outset of the hearing, the tenant confirmed that she required assistance from her translator with English. I notified the translator that his role during the hearing was to translate between myself, the landlord and the tenant so that the tenant could understand. He confirmed that he would not be a witness or personally testify to events during the tenancy because his role was to translate. He affirmed an oath to this effect at the beginning of the hearing. After affirming the oath, the translator began giving personal testimony about events during the tenancy, he did not translate any information to the tenant, and the tenant could be heard yelling and disagreeing with his answers to my questions. The translator stated that he had practiced and prepared for the hearing beforehand, so he had personal knowledge of the events. Yet, the translator provided confusing and constantly changing testimony about service of documents and basic questions about the tenancy. When I asked the translator questions about his role and his knowledge of events, he refused to answer my questions and began asking me other questions to avoid answering.

Throughout the conference, the tenant's translator interrupted me and argued with me. The tenant also yelled answers at me when I asked her questions. I cautioned both the tenant and her translator multiple times to stop interrupting me and yelling at me. I asked them to allow me to speak so that I could effectively conduct the hearing. I notified them that I would give them a chance to speak and present the tenant's case,

as well as respond to mine and the landlord's questions. The tenant's translator continued with his disruptive and inappropriate behaviour throughout the entire hearing. When I asked him questions, he refused to answer them and began making inappropriate personal comments about me.

However, I allowed the tenant and her translator to attend the full hearing, despite their disruptive and inappropriate behaviour, in order to provide them with a full opportunity to present the tenant's application and respond to the landlord's comments.

I caution the tenant and her translator to not engage in the same inappropriate and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and they may be excluded from future hearings. In that event, a decision will be made in the absence of the tenant and her translator.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

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

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on August 1, 2015. Monthly rent in the amount of \$770.00 was payable on the first day of each month. A security deposit of \$385.00 was paid by the tenant and the landlord returned it in full to the tenant. No written tenancy agreement was signed by the parties, only a verbal agreement was reached.

The tenant claimed that her tenancy ended on November 30, 2018, while the landlord said that it was November 29, 2018.

The tenant seeks a monetary order of \$11,260.00 plus the \$100.00 application filing fee. The tenant claims for the difference between the higher rent and parking of \$1,650.00 that she is paying now to a new landlord in a new rental unit, compared to her previous rent of \$770.00 that she paid to the landlord in the rental unit. The tenant seeks \$880.00 for a period of twelve months, totalling \$10,560.00. The tenant also claims for moving expenses of \$600.00, which includes a \$200.00 move-in fee for her new place and \$400.00 to rent a moving truck and have her friends help her move. The tenant claimed that the landlord forced her to move out of the rental unit because he said his sick mother had to move in. The tenant said that she had to rush and find a new place, so she ended up paying double the rent amount. She stated that the landlord lied, he posted an advertisement to re-rent the unit for a higher amount of \$1,200.00, and his mother never moved into the unit. The tenant did not provide her new tenancy agreement but she provided e-transfer confirmation emails and a rent receipt from her new landlord, indicating that she has been paying rent since December 2018 to her new landlord. The tenant claimed that she did not receive an RTB notice to end tenancy from the landlord to move out.

The landlord said that he did not force the tenant to move out. He said that he wanted his mother to move into the rental unit but then found out she was really sick and she could not be alone so she currently lives with the landlord. He maintained that there was no rush for the tenant to move, his mother was previously living with his brother, so he did not pressure the tenant to move quickly. He claimed that the tenant told him that she had found a place to move to, she asked for her security deposit back, he returned it to her, and she said she was happy. He stated that the tenant's translator encouraged the tenant to go after the landlord for money, he demanded \$3,000.00 from the landlord, he called the landlord's son and told him the rental advertisement was illegal, and his son took down the advertisement because he did not know it was illegal.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;

- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's entire application of \$11,260.00 without leave to reapply.

I find that the tenant voluntarily vacated the rental unit. The tenant did not prove that she was forced to move. The tenant did not receive a notice to end tenancy on a RTB approved form, for her to move. The tenant did not file an RTB application indicating that she was being forced to move out. The tenant did not call the police indicating that she was being forced to move out. I find that she incurred moving costs, which she would in any event, when leaving the rental unit. The fact that the tenant chose to leave when she did, was up to her. Regardless of the landlord's intentions for the rental unit, the tenant was not required to move and she did so voluntarily. Therefore, any moving expenses or increased rent paid, are the tenant's own costs to bear.

As the tenant was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The tenant's entire application is dismissed 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 22, 2019

Residential Tenancy Branch