



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNRT, OLC, OT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 06, 2018 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed, the cost of emergency repairs made during the tenancy and reimbursement for the filing fee.

The Tenant had filed an amendment to the Application changing her postal code.

The Tenant appeared at the hearing with L.F. to assist. The Landlord did not appear at the hearing. I explained the hearing process to the Tenant and L.F. who did not have questions when asked. The Tenant and L.F. provided affirmed testimony.

The Tenant had submitted evidence prior to the hearing. The Landlord had not. I addressed service of the hearing package and Tenant’s evidence.

The Tenant and L.F. testified as follows. The hearing package and evidence were sent by registered mail to the Landlord on December 07, 2018. The package was sent to the Landlord’s business address. I note that this is the same address included on a Two Month Notice served on the Tenant by the Landlord in June of 2018.

The Tenant and L.F. provided Tracking Number 1 for this package. I looked this up on the Canada Post website which shows it was delivered and signed for by the Landlord December 10, 2018.

Based on the undisputed testimony and Canada Post website information, I find the Landlord was served with the hearing package and evidence in accordance with section 59(3) of the *Residential Tenancy Act* (the “Act”). I do not find the Landlord was served in accordance with sections 88 or 89 of the *Act* given the package was sent to a

business address and I do not understand this to be an address at which the Landlord carries on business as a landlord. However, I am satisfied the package was sufficiently served for the purposes of the *Act* pursuant to section 71(2)(c) as it was sent to an address the Landlord used on correspondence with the Tenant and because I have evidence before me that the Landlord in fact received the package.

The Tenant did not know if the Amendment was served on the Landlord. I do not find this to be an issue given the only amendment was to the Tenant's postal code.

As I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant and L.F. were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the Tenant and L.F. I have only considered the evidence pointed to by the Tenant and L.F. during the hearing. The Tenant and L.F. were told they must point to the relevant evidence during the hearing. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to the cost of emergency repairs made during the tenancy?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant sought the following compensation:

Item	Description	Amount
1	Steps bought from neighbour	\$30.00
2	Steps installed by friend	\$30.00
3	Stop payment of cheque	\$12.50
4	½ month rent	\$500.00
5	Filing fee from previous dispute	\$100.00
	TOTAL	\$672.50

A written tenancy agreement was submitted as evidence. The tenancy started May 15, 2013 and was a month-to-month tenancy. Rent was \$1,000.00 per month due on the

first day of each month. No security deposit or pet damage deposit was paid. The agreement is signed by the Landlord, co-landlord and Tenant.

The Tenant and L.F. testified as follows.

The tenancy ended September 14, 2018.

The rental unit was a mobile home that was owned by the Landlord and rented out to the Tenant.

The stairs to the rental unit were rotting, held up with bricks, falling apart and dangerous. These were the only stairs into the rental unit. The Landlord was aware the steps needed to be fixed and said he would fix them but never did. The Tenant purchased a set of stairs from her neighbour and had a friend install them. It cost \$30.00 to purchase them and \$30.00 to install them. This was an emergency repair.

The Tenant and L.F. pointed to photos of the stairs submitted as evidence.

In relation to the stop payment charge, the Landlord would not return the Tenant's September cheque and therefore she had to stop payment on it. She did so in August. The Tenant had paid August rent. The Tenant vacated the rental unit mid September. The Landlord had issued the Tenant a Two Month Notice. The Landlord had not given the Tenant compensation for this pursuant to section 51 of the *Act*. Therefore, the Landlord was not entitled to cash the September cheque but would not return it.

The Tenant and L.F. pointed to a bank statement submitted as evidence showing the stop payment charge.

In relation to the half month's rent, the Tenant is seeking this pursuant to section 51 of the *Act* given she was issued a Two Month Notice. The Two Month Notice was served on the Tenant June 28, 2018. The effective date of the Two Month Notice was September 01, 2018 but the Tenant was unable to move until mid September. The Landlord never gave the Tenant the required compensation.

The Tenant and L.F. pointed to the Two Month Notice submitted as evidence.

In relation to the filing fee, the Tenant is seeking reimbursement in relation to the previous file where she was ordered to reimburse the Landlord for the \$100.00 filing fee.

The Tenant sought to rely on evidence not before the arbitrator at the prior hearing.

I have read the previous decision. At that hearing, the parties agreed the Tenant vacated the rental unit September 15, 2018.

Analysis

Section 7 of the *Act* states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Steps

Repair of the steps was not an emergency repair as defined in section 33(1) of the *Act*.

However, the obligations of landlords and tenants to repair and maintain rental units is set out in section 32 of the *Act*. I am satisfied it was the Landlord's responsibility to repair and maintain the steps leading in and out of the rental unit. I accept based on the undisputed testimony and photo submitted that the stairs were damaged and dangerous and needed to be repaired. There is no evidence before me that the Tenant caused the damage. I find the Landlord breached section 32 of the *Act* by not repairing the steps. Based on the undisputed testimony and photo submitted, I accept the Tenant had to repair the steps and accept that she did so. Based on the undisputed testimony, I accept that the Tenant purchased steps for \$30.00 and had a friend install them for \$30.00 for a total of \$60.00. I find this amount to be reasonable and award the Tenant the \$60.00.

Compensation under section 51 of the Act

Section 51 of the *Act* states:

51 (1) A tenant who receives a notice to end a tenancy under section 49...is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Based on the undisputed testimony, evidence submitted and prior decision, I accept that the Landlord issued the Tenant a Two Month Notice in June with an effective date of September 01, 2018. Based on the undisputed testimony, I accept that the Tenant paid rent up until August. Based on the undisputed testimony, I accept that the Tenant did not pay rent for September and vacated the rental unit mid September. The Tenant therefore lived at the rental unit for half a month rent free. Based on the undisputed testimony, I accept that the Landlord never gave the Tenant one month's rent as compensation under section 51 of the *Act*. I am satisfied the Tenant is entitled to a half month's rent pursuant to section 51 of the *Act*.

Stop payment

Based on the undisputed testimony, I am satisfied the Landlord had not given the Tenant one month's rent compensation under section 51 of the *Act* in August and therefore was not entitled to cash the September rent cheque. The Landlord should have returned the cheque. I am satisfied the Landlord failed to comply with term 7 of the tenancy agreement. Based on the undisputed testimony and evidence submitted, I accept that the Tenant had to stop payment on the cheque and that this cost \$12.50. I award the Tenant reimbursement for this amount.

I acknowledge that the Tenant was required to vacate the rental unit September 01, 2018 and should have done so. The reasons provided by the Tenant for not doing so during the hearing are not sufficient. However, I am satisfied the Tenant is still entitled to this amount given the Landlord had not yet complied with section 51 of the *Act* at the end of August.

Filing fee

I do not find the Tenant is entitled to reimbursement for the filing fee she was ordered to pay to the Landlord at the previous hearing. Ordering this would be the equivalent of changing the decision of the prior arbitrator which I do not have authority to do nor would I do. The fact that the Tenant seeks to rely on evidence during this hearing that was not before the arbitrator at the prior hearing is not relevant. This hearing is not an opportunity to re-argue an issue before the arbitrator at the prior hearing which is what the Tenant is attempting to do. I decline to award the Tenant this amount.

In summary, the Tenant is entitled to compensation for the following:

Item	Description	Amount
1	Steps bought from neighbour	\$30.00
2	Steps installed by friend	\$30.00
3	Stop payment of cheque	\$12.50
4	½ month rent	\$500.00
5	Filing fee from previous dispute	-
TOTAL		\$572.50

As the Tenant was successful in this application, I award her reimbursement for the \$100.00 filing fee for the Application pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$672.50 and I issue the Tenant a Monetary Order in this amount.

Conclusion

The Tenant is entitled to a Monetary Order in the amount of \$672.50 and I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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 *Act*.

Dated: April 01, 2019

Residential Tenancy Branch