



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CONN LODGE C/O AZIZAMAL CO HOLDINGS CANADA LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDCT, 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 that the Landlord return all or part of the security deposit and/or pet damage deposit;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenant, the Tenant's Representative, M.N., as well as the Landlord's Agent, C.T., attended the hearing at the appointed date and time, and provided affirmed testimony.

Preliminary Matters

The Tenant made an amendment to her Application on January 23, 2019 to include a claim for monetary compensation in the amount of \$29,338.94.

At the start of the hearing, the parties agreed that they took part in a previous hearing on February 1, 2019 during which the Arbitrator made a finding with respect to the Tenant's security deposit. As such, the Tenant wished to withdraw her claim for the return of her security deposit. As both parties agreed, the Tenant's Application was amended accordingly.

The Tenant testified that she served her Application and the amendment increasing the monetary amount of the claim, along with the supporting documentary evidence

package, to the Landlord by registered mail on Jan 15 and 23, 2019. C.T. confirmed receipt. C.T. testified that she served the Tenant with the Landlord's documentary evidence by registered mail on June 24, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 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.

Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?
2. Is the Tenant entitled to an order granting 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 began on October 1, 2015. The Tenant paid rent in the amount of \$2,198.00 which was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,025.00 which has since been returned to the Tenant. The tenancy ended on September 29, 2018.

The Tenant testified that she provided the Landlord with her written notice to end tenancy on August 30, 2018, with an effective vacancy date of September 30, 2018. The Tenant stated that she was unhappy with her tenancy as she felt harassed by the Landlord after receiving two separate notices to end tenancy. The Tenant stated that she was successful in disputing both notices. Furthermore, the Tenant stated that the Landlord sent her several caution notices throughout the tenancy which threatened eviction. As a result, the Tenant felt it was necessary to end her tenancy on September 30, 2018. The Tenant set out her claim on a monetary worksheet which was included in her Application.

The Tenant is seeking to recover her moving cost as a result of feeling forced out of her tenancy. The Tenant is claiming \$110.44 for the cost of a moving truck, \$30.00 for the cost of dumping fees, \$115.00 to fill the moving truck with gas, and \$350.00 for the cost of cleaning her rental unit at the end of the tenancy. The Tenant provided receipts in support.

In response, C.T. stated that the Landlord was justified in serving the Tenant with caution letters as well as notices to end tenancy. C.T. stated that the Tenant decided to end her tenancy by providing written notice, therefore the Landlord should not be responsible for bearing these costs.

The Tenant is also claiming the cost of hiring a consultant to assist her in a previous dispute resolution hearing in the amount of \$1,732.50. The Tenant provided a receipt in support. In response, C.T. stated that the consultant used by the Tenant was not qualified and should not be authorized to charge for services.

Lastly, the Tenant is claiming for compensation in the amount of \$25,776.00 which is equivalent to 12 months' rent as a result of the Landlord harassing her throughout the tenancy. The Tenant stated that she began to receive caution letters from the Landlord in February 2018 which threatened eviction. The Tenant stated that she later received an eviction notice in May and August, 2018. The Tenant stated that she had plumbing issues in her rental unit as well.

C.T. stated that the caution letters were not threatening, and that it is the Landlord's responsibility to ensure that the Tenant is complying with the Act during her tenancy. C.T. stated that the Landlord had concerns regarding the Tenant operating a short term vacation rental and provided the Tenant with notices cautioning her from continuing, as it may impact her tenancy.

If successful, the Tenant is seeking the return of the filing fee paid to make the Application.

Analysis

Based on the documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

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 Residential Tenancy Policy Guideline #16 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 Tenant 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 Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

In this case, the Tenant is seeking to recover her moving cost as a result of feeling forced out of her tenancy. The Tenant is claiming \$110.44 for the cost of a moving truck, \$30.00 for the cost of dumping fees, \$115.00 to fill the moving truck with gas, and \$350.00 for the cost of cleaning her rental unit at the end of the tenancy.

I accept that the parties agreed that the Tenant provided the Landlord with her written notice to end tenancy on August 30, 2018, with an effective vacancy date of September 30, 2018. While the Tenant is claiming that she felt forced out of her tenancy by the Landlord, I find that the Tenant had other remedies under the Act at the time, which she could have applied for rather than ending her tenancy. As the Tenant chose to end the tenancy on her own volition, I find that the Landlord did not breach the *Act*. As such, I dismiss the Tenants claim for compensation relating to the moving truck, dump fees, gas, and cleaning costs without leave to reapply.

The Tenant is also claiming the cost of hiring a consultant to assist her in a previous dispute resolution hearing in the amount of \$1,732.50. In this case, I find that the Tenant was not obligated to hire a consultant for a previous dispute resolution hearing. I find that these costs are not recoverable by the Tenant. As such, I dismiss the Tenant claim without leave to reapply.

Lastly, the Tenant is claiming for compensation in the amount of \$25,776.00 which represents 12 months' rent as a result of the Landlord harassing her throughout the tenancy. The Tenant stated that she began to receive caution letters from the Landlord in February 2018 which threatened eviction. The Tenant stated that she later received an eviction notice in May and August, 2018. The Tenant stated that she had plumbing issues in her rental unit as well.

I find that the letters and eviction notices served to the Tenant by the Landlord were lawful and non-threatening. I find that it is within the Landlord's right to caution the Tenant regarding a possible contravention of the *Act*. I find that the caution letters outlined that failure to comply with the Landlord's warnings may result in a notice to end tenancy. The Tenant stated that there was a plumbing issue in the rental unit during her tenancy. I find that the Tenant could have made an application for an order that the Landlord repair the issue, should she feel it was necessary. I find that the Tenant provided insufficient evidence to demonstrate that the Landlord breach the *Act*, regulations, or tenancy agreement, therefore, I dismiss the Tenant's claim without leave to reapply.

As the Tenant was unsuccessful with her Application, I find that she is not entitled to recover the filing fee.

Conclusion

The Tenant provided insufficient evidence to support her monetary claim for compensation. The Tenant's 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: July 17, 2019