



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT MNRT MNSD**

Introduction

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

- Authorization to recover the filing fees from the landlord pursuant to section 72;
- A monetary order for damages or compensation pursuant to section 67;
- A monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

Both parties attended the hearing. The tenant was self represented and the landlord was represented by AB, his son ("landlord"). The landlord acknowledged receipt of the tenant's Application for Dispute Resolution Proceedings Package and the tenant acknowledged receipt of the landlord's evidence. Both parties stated there were no concerns with timely service of documents and were prepared to deal with the matter of the application. 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.

Preliminary Issue

Section 64(3) of the *Act* allows the director to amend an application for dispute resolution. The party names on the tenant's Application for Dispute Resolution did not properly reflect the names on the tenancy agreement. In accordance with section 62, the landlord's name was corrected and the second named tenant/applicant was removed as he was not named on the tenancy agreement and did not sign it. The corrected parties' names are reflected on the cover page of this decision.

Issue(s) to be Decided

Is the tenant entitled to:

- Authorization to recover the filing fees from the landlord pursuant to section 72;
- A monetary order for damages or compensation pursuant to section 67;
- A monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

Background and Evidence

The tenant provided the following testimony. She moved into the rental unit in August of 2015. She asked the landlord's son for a tenancy agreement however he kept postponing providing her with one, saying his printer was broken. In her written material dated July 5, 2019, the tenant acknowledges she received a signed version of the tenancy agreement on January 4, 2017 when the landlord was trying to evict her.

There was a sewer backup when she first moved in but it was repaired by the landlord within 2 or 3 days. There were 2 floods in September 2015, one of which flooded the bathroom and went into the living room. The landlord never bothered to look at it.

In November 2015, the tenant began to get sick and dizzy. She couldn't walk and went to the hospital. In July 2016 the tenant was diagnosed with cancer. In September 2016, the tenant testified she advised the landlord she had no heat and the landlord gave her a tiny heater in response. The rental unit, a basement suite, does not have carpeting, only tile flooring which is very cold in the winter. The landlord provided sporadic heat as he was trying to conserve energy and keep heating costs low. In mid December 2016, the landlord fixed the heating issue when the home's boiler was changed.

The tenant also testified that the heaters she plugs in blow fuses causing her to stay cold in the rental unit. February 2017 was a very cold month and the landlord never

came to inspect the heating issue or to apologize. The power was always going out and never got fixed, the tenant sat in the dark with candles.

In October 2016, the tenant heard noises in the walls of her rental unit and noticed mouse droppings. She told the landlord about it but nothing got done. She went to a hardware store and purchased mouse traps to trap and kill the mice herself. She testified she caught 6 or 7 mice and took photographs of the mice she killed. Photos were provided as evidence as were photos of damage done to her sofa, mattress and clothing she sent to the cleaners to be disinfected and deodorized.

The tenant testified that in November she was sleeping in the same room as mice, getting sick from their presence. By mid December, she purchased more traps but was having problems eliminating the mice herself due to cancer surgery. In February 2017, the landlord hired exterminators to get rid of the mice however their methods were no more successful than her own.

On February 28, 2017, the tenant gave 1 month notice to end tenancy and the tenant moved out one month later. The tenant testified the security deposit was not returned to her. In her application, she seeks the return of the \$375.00 security deposit plus an additional 4% interest.

The tenant filed a monetary order worksheet, as reproduced below:

	Receipt/Estimate	For	Amount
1.	Pest Detective	Mice inspection	\$136.50
2.	Moving company	Moving expenses	\$613.48
3.	Bldg. maint. Carpet cleaning	Sanitize, deodorize	\$157.50
4.	Bldg. maint. Carpet cleaning	2 carpets sanitize, deodorize	\$131.25
5.	Cleaners	Suits, tops, dresses, clothes	\$862.05
6.	Shoes	New shoes – mice droppings	\$134.40
7.	Mattress store	Matresses chewed by mice	\$798.01
8.	Walmart	8 photos printed	\$19.14
9.	Staples	Phots copied	\$2.85
10.	Home Depot	Mice traps	\$37.81
11.	No proper notice to end tenancy	Free one month rent	\$800.00
12.	[landlord]	Damage deposit + 4%	\$413.75
13.	Tenant	Cleaning sewer	\$987.50
14.	19 ½ months @ 100.00	Power outage loss of electricity	\$1,950.00

15.	19 ½ months rent	Loss of quiet enjoyment	\$3,120.00
16.	Indiscernible dates	Loss of damage to property	\$2,400.00
17.	Suit cleaning	Dog hairs	\$150.00
18.	Aug 15 – Dec 15, 2015	No heat	\$1,200.00
19.	Aug 15 – Mar 31, 2017	Aggravated damages	\$2656.27
20.	TOTAL		\$16,570.48

The landlord provided the following testimony. The home was built in 2012. He lives in the basement suite right beside the tenant and his mother and father live in the upper unit of the house. The home underwent inspections and approvals from city inspectors as it was being built. The tenant's rental unit is a fully legal basement suite that was approved by the city with perfectly functional heating and plumbing. The description of the rental unit as a horrible environment to live in is false.

The tenant refused to sign a tenancy agreement with the landlord. He provided a letter dated September 1, 2015 as evidence of his request to the tenant to sign the agreement presented to her. Rent was set at \$800.00 per month, well below market value because the landlord wanted to find a good tenant that would want to rent for a long time.

The landlord states that heat was included in the tenant's rent. He provided a bill from the electric utility indicating he paid a lot in electricity bills during the tenancy, disputing the tenant's claim that heat was not provided.

Since both he and his parents live in the same house as the tenant, ignoring a mouse issue is inconceivable. As a homeowner, the landlord would want to deal with mice in his own home immediately. The landlord's son lives right next door to the tenant and did not experience any mouse issues, however when he was made aware of the mouse issue, he immediately hired professional exterminators to get rid of them. The landlord provided invoices dated February 11, February 18, February 25, March 11 and March 14, 2017 as evidence of responding to the tenant's request to eradicate the mice. The landlord points to the photographs provided as evidence by the tenant as proof that personal garbage left outside the tenant's suite may have brought the mice into the basement suite.

The landlord characterizes the tenant's claim as retaliation for not allowing the tenant to park in the common driveway to the house.

The landlord testified the security deposit was returned to the tenant on March 31, 2017 and provided a receipt to prove it. The landlord provided no testimony as to whose signature appears on the receipt.

Analysis

Rule 7.4 of the Residential Tenancy Branch Rules of Procedure state that evidence must be presented by the party who submitted it, or by the party's agent. Pursuant to Rule 7.4 only evidence that was specifically referred to by the parties during the hearing was taken into consideration. Written submissions supplied but not presented as evidence during the hearing was not considered.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

In the case before me, the burden is upon the tenant prove it is more likely than not the facts support her claim.

Turning first to the tenant's claim regarding the flood she says took place in 2015. The tenant has not provided sufficient evidence to support any claim for compensation. There are no photographs to prove such a flood took place or any invoices to show the existence of the damage or loss. Item 13 of the tenant's claim is dismissed.

Next, the tenant claims for having no heat or deficient electricity during the tenancy. The tenant has described living approximately half the time without heat from the time she moved in until the time the boiler was fixed in mid December 2016. I am satisfied by the evidence and the testimony of the parties that the landlord was in violation of section 27 of the *Act* by restricting a service or facility essential to the tenant's use of the rental unit as a living accommodation. The electricity bills provided by the landlord are not indicative of anything to show the landlord took steps to provide the tenant with heat as there is no correlation between the electricity bills for the entire house and the heat in the tenant's particular unit. The evidence presented by the tenant shows the tenant

made multiple attempts to have the landlord provide the essential service but he failed to do so until the boiler was fixed. For the 15 months without heat, I award the tenant 10% of each month of rent, or \$80.00. ($\$80.00 \times 15 = \mathbf{\$1,200.00}$). Item 18.

The tenant claims she suffered from faulty electricity throughout her tenancy. The landlord testified the rental unit is relatively new, met all codes while under construction and was inspected prior to occupancy. While both parties have provided credible, plausible testimony, it's the applicant's burden to prove their version of the events is the more accurate one, based on a balance of probabilities. I find the tenant has provided insufficient evidence to persuade me that the landlord was in violation of the *Act* for faulty electricity. Item 14 of the tenant's claim is dismissed.

Next, the tenant claims for damage caused by the mouse infestation. To be successful in this claim, the tenant must show the landlord failed to address the mouse issues in accordance with section 32 of the *Act*. The tenant provided multiple photographs of mice and droppings to prove there was a mouse infestation in the rental unit. I note from names of each photograph that they were taken between mid-February and early March 2017. Also, the evidence shows the tenant sought the assistance of an exterminator after she gave notice to end the tenancy. Conversely, the landlord provided invoices from the pest control company showing they attended on 5 separate occasions to deal with it between February and March 2017. I am also persuaded by the landlord's testimony that both he and his parents live in the same house as the tenant and would not knowingly permit a rodent infestation throughout the home. While I am satisfied there was a problem with mice, I am also satisfied the landlord actively took the steps to required to keep the property in a state of repair that complies with the health, safety and housing standards required by law in accordance with section 32. Items related to compensation for damages due to mice is dismissed, items 1,3,4,5,6,7,10,16,17.

The tenant seeks compensation for 1 month rent from the landlord for not giving her proper notice to end tenancy and moving expenses. Section 51 provides that a landlord is required to provide this compensation when the tenant receives a notice to end tenancy under section 49. As the tenant gave the notice to end the tenancy on February 28th, there is no requirement for the landlord to compensate the tenant. Likewise, the *Act* does not provide any reason to compensate a tenant for moving expenses when the tenant ends a tenancy. Items 2 and 11 are dismissed.

The tenant seeks compensation for a loss of quiet enjoyment for the entire duration of her tenancy of 19 ½ months. While I have found the tenant was living in the rental unit

with sporadic heat, compensation was awarded as 10% of her rent for the time she was without it. Further, the tenant had the opportunity to either file an application for dispute resolution during the tenancy addressing the perceived deficiencies or to move out of the rental unit thereby mitigating the damages she seeks. For these reasons, I find the tenant is not entitled to an award for any loss of quiet enjoyment. Item 15 is dismissed.

Regarding the tenant's claim for aggravated damages. Residential Tenancy Branch Policy Guideline PG-16 states:

"Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded.

Once again, I find the tenant has been fully compensated for the intermittent heat problem she experienced during the first 15 months of her tenancy. The remainder of the tenant's claims were dismissed. I find there is a deficiency of evidence to prove the tenant should be awarded any compensation for aggravated damages in this case. Item 19 is dismissed.

Pursuant to section 72, the only award the director can make with respect to an Application for Dispute Resolution are the fees to start a proceeding under section 59(2) or file a review under section 79(3). Items 8 and 9 for printing and copying photos are dismissed.

The tenant seeks a return of her security deposit in the amount of \$375.00 plus 4% interest, making \$413.75. This tenancy began in 2015. Interest on security deposits since 2009 has been zero. The tenant is not entitled to any interest. The landlord testified he gave the tenant her security deposit back on March 31, 2017 and provided her with a receipt on that day which the tenant disputes. I find the receipt provided by the landlord does not support his claim of repayment as the name of the person who signed the receipt is unclear. I am persuaded by the tenant's evidence which shows she sought a return of her security deposit after providing her forwarding address and did not receive it back. Section 38 of the *Act* requires the landlord to either refund a tenant's security deposit or make an application to claim against it within 15 days of the later of the tenant vacating and providing their forwarding address in writing. The landlord received the tenant's forwarding address on February 28, 2017 when he was provided with the notice to end tenancy on that date.

If the landlord does not refund the deposit or make an Application to claim against it within the 15 days from when he receives the forwarding address at the end of the tenancy, the tenant is entitled to a refund of twice her deposit according to section 38(6) of the *Act*. I award the tenant her security deposit doubled to **\$750.00**, pursuant to section 38(6).

As the tenant's claim was successful, the tenant is also entitled to recover the \$100.00 filing fee for the cost of this application.

Item	Amount
15 months of intermittent heat	\$1,200.00
Security deposit (\$375.00 x 2)	\$750.00
Filing fee	\$100.00
Total	\$2,050.00

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$2,050.00.

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: August 22, 2019

Residential Tenancy Branch