



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on August 1, 2019, and October 7, 2019, by conference call. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for compensation for damage or loss under the Act.

The Landlord was present at both hearings. The Tenant was also at both hearings, along with her mother as an advocate (collectively referred to as the "Tenant"). The Tenant also had a police officer attend the hearing as a witness.

The Landlord stated she did not receive any of the Tenant's packages. The Tenant stated she sent the Landlord her Notice of Hearing by registered mail on April 1, 2019, and her documentary evidence by registered mail on July 2, 2019. The Tenant provided registered mail tracking information showing these packages were sent to the Landlord's place of residence. The Landlord confirmed that this was her residence, but claims she didn't get them. Pursuant to section 88, 89, and 90, I deem the Landlord received these packages 5 days after they were mailed, on April 6, 2019, and July 7, 2019, respectively.

The Tenant confirmed receipt of the Landlord's documentary evidence, and took no issue with the service of these documents.

Both parties were provided the 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 compensation for damage or loss under the Act?
2. Is the Tenant entitled to the return of her security deposit?

Background and Evidence

General Background Information

During the hearing, the Landlord had to be warned numerous times to be respectful and to not talk over the Tenant. The Landlord repeatedly spoke out of turn, and at one point I heard her mocking the Tenant and making fake crying sounds to imitate the Tenant. The Landlord had to be warned not to laugh at the Tenant, and I asked her to immediately stop being rude.

Both parties agree that:

- monthly rent was \$1,442.00 and was due on the last day of the preceding month.
- the Tenant lived in the main floor of the house, and the Landlord lived on the two floors above.
- the Landlord holds a security deposit in the amount of \$721.00.
- the Tenant moved into the rental unit around December 31, 2018, and due to a breakdown in the relationship with the Landlord and an issue with the heat, the Tenant moved out sometime in mid-February 2019.
- The Tenant paid for January and February rent, in full.

The Tenant stated:

- she is a student and moved into this house because it was an affordable place to live.
- the landlord started slipping notes under her door shortly after moving in about unfounded claims.
- the Landlord began accusing her of doing drugs, and harbouring immigrants with no basis.

- she scanned copies of some of the Landlords letters to her, which show scattered, confusing, and difficult to read handwritten letters.
- that the Landlord turned the heat off on February 10, 2019
- she tried to contact the Landlord by phone, and by knocking on the door over the span of a couple days but the Landlord would not respond.
- she did not have access to the thermostat and the furnace which controls the main heat source (gas furnace).
- she called the gas company who confirmed that the gas was still on, despite there being no heat.
- That eventually she called the police on February 11, 2019 to report that her Landlord had turned her heat off.
- No one from the police showed up, so she called the police again on February 14, 2019. The police attended on this day.
- She went to buy portable heaters on February 14, 2019.
- She came home to plug in the heaters, and shortly after, the Landlord switched the breakers off, so she couldn't operate the heaters.
- She moved out on February 14, 2019, and later returned at the end of February/early March to move the rest of her belongings out.
- At one point the Landlord chased the pizza delivery guy away because she believed he was a drug dealer.

The police officer who attended the rental unit on February 14, 2019, appeared as a witness for the Tenant. He stated the following:

- He attended the rental unit on February 14, 2019, and he was aware of the call the Tenant had made on February 11, 2019.
- There was snow on the ground when he arrived and when he went inside the rental unit, he could see his breath.
- There was no heat and no electricity
- The call the Tenant made on February 11, 2019 was about the gas being turned off
- This was his first time he attended the house but he was aware that the Landlord had called the police on February 13, 2019, because she heard the Tenant knocking at her door.
- When he attended the rental unit on February 14, 2019, to investigate, the Landlord started "ranting" about how the Tenant was harbouring illegal immigrants, smoking drugs, and doing cocaine.

- He believed the house was uninhabitable due to the low temperatures inside and the Landlord was not being cooperative.
- He tried to gain access to the Landlord's unit to see if there was anything visibly wrong with the breakers or the furnace, and the Landlord refused to let him in.
- He forwarded a copy of his police report to the mental health unit for follow up.

The Tenant provided a worksheet listing a few items she is seeking. They are listed as follows:

1) \$2,168.04 – Douglas Guest House

The Tenant stated that she spent February 10-14th without any heat in her rental unit, so she was forced to move out on the 14th. The Tenant stated that she spent the 14-16th of February with a friend, but moved into the guest house after that point because she had nowhere else to go. The Tenant provided an invoice, showing that this amount was paid in full, for 12 nights accommodation (February 17 – March 1, 2019) at a rate of \$175.00 per night, minus a weekly rental discount.

2) \$250.00 – Safeway Food Card

The Tenant stated that her mother had to buy her an additional safeway gift card on February 24, 2019, to keep up with the added expenses. A receipt for this card was provided into evidence.

3) \$300.00 – Moving Costs

The Tenant stated that she paid \$300.00 in cash to have her things moved on March 1, 2019, after being forced to leave due to no heat. A receipt was provided into evidence which shows that a moving company accepted \$320.00 to move the Tenant to her new apartment.

4) \$68.00 – Legal Fees

The Tenant stated that she called the Residential Tenancy Branch at the time this was unfolding and she also sought independent legal advice. A receipt for this was provided into evidence.

5) \$30.50 – Laundry Fees

The Tenant stated that she had laundry included at the rental unit, and she had to pay the above amount for laundry service for the second half of February while she was forced to live at the guest house. The Tenant provided a receipt into evidence.

6) \$927.00 – Rent Rebate

The Tenant stated in the hearing that she is not actually seeking \$927.00, but rather \$721.00, which is a half month's rent. The Tenant stated she should be entitled to this amount because her house was unlivable for at least half of February.

7) \$1,500.00 – Aggravated Damages

The Tenant stated that she was in a demanding school program, and this issue almost caused her to fail her course because she was in the middle of mid-term exams at the time. The Tenant stated she lost countless nights sleep, had to move unnecessarily. The Tenant stated it was extremely stressful dealing with such a hostile Landlord who would stop at nothing to end the tenancy.

The Tenant is also seeking the return of her security deposit. The Tenant submitted that she gave her forwarding address in writing to the Landlord by email, which the Landlord denies getting. The Landlord stated she only found out about the Tenant's address for service as part of this application/Notice of Hearing.

The Landlord stated:

- The Tenant's version of events is "vexatious and frivolous" and is a "bunch of lies"
- This is a hoax to extort her
- The heating system was never off or broken, nor was the power
- The Tenant plugged in her own heaters and almost burned the house down
- The Tenant damaged the unit and she has photos. However, she did not provide them into evidence.
- The Tenant was a drug user, and smoked pot in the rental unit.
- She called the police to get a restraining order against the Tenant, but they never followed up and investigated
- The police never got back to her about her complaints

- The police are against her because she is a “whistleblower”
- The police hurt her dog and she is a target of police brutality
- The police are getting “kickbacks” from the Tenant
- The police are motivated by hate
- The Tenant hasn’t had enough discipline in her life
- She is on the “verge of blindness” due to issues with her cataracts

The Landlord did not refer me to her documentary evidence, which consisted of several pages of handwritten text. She did not try to clarify or explain her position or her message in this documentary evidence, and some of the pages are illegible and some of the writing is unintelligible.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/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 everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Heat Issue

First, I will address the issue regarding the heat, and the electricity. I note the tenancy was short lived. The Tenant only lived in the unit for January 2019, and part of February 2019. It appears the relationship was fraught with allegations of drug use, and misunderstandings about how and for what the rental unit was being used. Both parties have provided a vastly different account of what happened. On one hand, the Landlord stated that the furnace was never turned off, nor was the power. The Landlord maintains that the furnace works fine. The Landlord denies having interfered with these things.

In contrast to this, the Tenant has provided a detailed account of what occurred in early to mid-february, as her relationship with the Landlord degraded. The Tenant's version of events was directly corroborated by her witness testimony (the police officer who attended the rental unit on February 14, 2019). I find the Landlord's testimony lacked veracity, credibility, and clarity, both in general, and on this issue. As a result, I have placed more weight on the Tenant's version of events, as the Landlord's statements were difficult to follow, and largely unsubstantiated.

I find it more likely than not that the Landlord turned the heat off on February 10, 2019, as the Tenant has alleged. I also find it more likely than not that the Landlord turned off the breakers when she determined the Tenant was attempting to heat her unit with space heaters, which resulted in both no heat and at least a partial loss of electricity as of February 14, 2019. The lack of power and heat to the rental unit was directly supported by the testimony from the officer who attended the unit and said he could see his breath because it was so cold in the unit. I further note the officer found the Landlord to be uncooperative, difficult, and would not allow him to investigate why the heat and electricity was off (to see the thermostat or panel area). It does not appear the Landlord took sufficient steps to cooperate or figure out what the problem was with the heat and electricity. The Landlord stated that the police are "motivated by hate", are out to get her, and are getting "kickbacks" from the Tenant. However, she had no evidence to support these allegations. I find the Landlord's behavior was high handed, particularly given this occurred in the winter, and the Tenant did not have access to the master heat/electricity controls. Ultimately, it appears the Tenant had little other choice than to move out right away in order to stay warm.

Next, I will address each of the Tenant's monetary items in the same order as above, as they were laid out in her worksheet:

1) \$2,168.04 – Douglas Guest House

I note the Tenant spent February 10-14th without any heat in her rental unit, so she was forced to move out on the 14th. After a couple of nights at a friends house, the Tenant eventually rented a short term rental for February 17 – March 1, 2019). This was at a rate of \$175.00 per night.

I note the following relevant portions of the **Policy Guideline #5 – Duty to Minimize Loss:**

This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

I find the Landlord breached the tenancy agreement by failing to adequately address the Tenant's loss of heat and electricity. On a balance of probabilities, it appears the Landlord intentionally turned the heat and electricity off. The loss of these two utilities in the middle of winter rendered the rental unit unliveable, which was corroborated by the Police Officer's testimony that he could see his breath in the rental unit when he attended.

I note the Tenant has provided a receipt showing what it cost to find last minute housing (at a guest house), while she searched for something more permanent. With respect to the Tenant's mitigation of her loss, I note that she was presented with a difficult scenario: finding a safe place to stay, in a city which is notoriously known for moderate to high cost of housing, lower than average vacancy rates, and doing so on very short notice while she was attending school. I also note she attempted to buy heaters to plug them in as an alternative heat source. However, she soon found her power was cut off as well. I find her efforts to mitigate were reasonable, as she eventually found something more long term after approximately 2 weeks at the short term rental. I award this amount, in full.

2) \$250.00 – Safeway Food Card

I note the Tenant stated that her mother had to buy her an additional grocery store gift card on February 24, 2019, to keep up with the added expenses. However, the Tenant did not sufficiently elaborate on what her additional expenses were, or how her expenses were different while living in the guest house, versus living at her rental unit. I find the Tenant failed to sufficiently detail this item. As such, I dismiss it in full, without leave.

3) \$300.00 – Moving Costs

Given the Tenant had to move out due to the Landlord's actions, and subsequent inactions, I find the Landlord ought to be responsible for the moving costs. I find it likely that the expeditious move out would have impeded the Tenant's ability to find alternative means to move, or to find lower cost options. In other words, I find she was forced into a position by the Landlord which made it difficult to further mitigate her loss. These are costs that were required to move, following the Landlord's breach of the tenancy agreement, and her obligations under the Act as a Landlord. Although the Tenant provided a receipt to show she paid \$320.00 to move, I also note the Tenant specifically stated in the hearing that it cost her \$300.00. As such, I will only award \$300.00 for this item.

4) \$68.00 – Legal Fees

I note the Tenant sought independent legal advice. However, I find this amount is not recoverable, as it was a personal decision as to whether or not she got this advice. I note there are many information sources available to Tenants and Landlords through our information services phone system, and through our comprehensive website. I decline to award this item.

5) \$30.50 – Laundry Fees

The Tenant stated that Laundry was included with rent, and the Landlord did not refute this. I find the Tenant ought to be entitled to this compensation due to the Landlord's breach of the Act. I find this laundry fee is reasonable over a 2 week period. I award this item, in full.

6) \$927.00 – Rent Rebate

The Tenant stated in the hearing that she is not actually seeking \$927.00, but rather \$721.00, which is a half month's rent. I note the Tenant stated she should be entitled to this amount because her house was unlivable for at least half of February, which is why she had to move to the guest house. However, I do not find the Tenant is entitled to this amount. In making this determination, I note the undisputed evidence is that the Tenant paid rent for February, in full. In exchange for this payment of rent, the Tenant was normally have been entitled to possession and full use of the rental unit, which did not occur in this case. I further note that in addition to paying rent to the Landlord for

February in the amount of \$1,442.00, the Tenant also paid \$2,168.04 for alternative accommodations for the last half of February 2019. This put the Tenant's expenses for accommodation up around \$3,600.00 for the month of February, when it should have been only \$1,442.00.

In these types of claims, I find it is more reasonable to be compensated in a manner such that the party suffering the loss (in this case, the tenant) is put in the same position they would have been had the Landlord not breached the Act and the tenancy agreement. Since I have already awarded the Tenant with compensation (item #1) in the amount of \$2,168.04, I find this already puts her in an equivalent financial position had she remained in the rental unit, without the issues. After taking into account her award under item #1, accommodations for the month of February ended up costing the Tenant \$1,442.00, which was her base rent. Given my findings on this, I decline to award this rent rebate, as her compensation for rent was already factored into item #1 above. This item is dismissed, in full.

7) \$1,500.00 – Aggravated Damages

The Tenant stated that she was in a demanding school program, and this issue almost caused her to fail her course because she was in the middle of mid-term exams at the time. The Tenant stated she lost countless nights sleep, had to move unnecessarily. The Tenant stated it was extremely stressful dealing with such a hostile Landlord who would stop at nothing to end the tenancy.

I note that, in addition to other damages, an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's behaviour. They are measured by the wronged person's suffering.

I am satisfied that the Landlord's conduct in early February 2019, was sufficiently high-handed as to warrant an award for aggravated damages. I find that there has been an aggravation of the Tenant's losses in addition to the loss of value of the tenancy awarded above. I note the Tenant was forced to flee the rental unit due to loss of heat and power, which is substantiated and corroborated by the police officer and witness who attended the hearing on the Tenant's behalf. I accept that the event was stressful

and ill-timed (in terms of the Tenant's school exams). However, it was relatively short lived. As such, I find a more reasonable amount for aggravated damages is \$500.00.

Next I turn to the Tenant's request for the return of her security deposit.

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, I find the Tenant has not provided her forwarding address in writing to the Landlord. I am not satisfied that email is sufficient, as the Landlord denied getting this email. Further, email is not an approved method of service under the *Act*, nor is giving someone your address via your Notice of Hearing. Ultimately, I am not satisfied the Tenant has properly served the Landlord with her forwarding address in writing.

Since the forwarding address was not properly provided from the Tenant to the Landlord, in writing, I dismiss the Tenant's application on this matter, with leave to reapply. I strongly encourage the Tenant to utilize registered mail to serve the Landlord with their forwarding address in writing, and if the Landlord fails to return the deposit, then the Tenant can reapply, and provide registered mail tracking information to show they served the Landlord with their forwarding address in writing.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I grant the monetary order based on the following:

Claim	Amount
Guest House costs	\$2,168.04
Moving costs	\$300.00
Laundry fees	\$30.50
Aggravated Damages	\$500.00

Filing Fee	\$100.00
TOTAL:	\$3,098.50

Conclusion

The Tenant's application for the return of her security deposit is dismissed, with leave to reapply.

The Tenant is granted a monetary order pursuant to Section 67 in the amount of **\$3,098.50**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: October 8, 2019

Residential Tenancy Branch