



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on June 15, 2019. The landlord stated that the tenant was not served with the submitted documentary evidence. The landlord stated that he did not understand the written instructions served to him, despite having a friend assist in translating and submitting his documentary evidence to the Residential Tenancy Branch.

I accept the undisputed evidence of both parties and find that the landlord was properly served as per sections 88 and 89 of the Act. On the documentary evidence submission of the landlord, I find that despite having assistance, the landlord chose not to make sure that he was well informed on the process of submitting evidence which I find insufficient. The landlord's documentary evidence submission is excluded from consideration in this hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks a clarified and lowered monetary claim of \$21,206.00 which consists of:

\$1,430.00	Balance owing from Tenant's Demand Letter, Compensation
\$500.00	Return of Security Deposit
\$650.00	Return of ½ Months Rent, September 2018
\$1,300.00	Compensation, 1 months complying with notice
\$15,600.00	Compensation, Sec. 51, Landlord Fail to Comply
\$4,176.00	Compensation, Tenant's Monthly Bus Pass for 12 months

The tenant seeks return of the original \$500.00 security deposit, \$650.00 for ½ of the monthly rent for September 2018 and \$1,300.00 for complying with the original notice to end tenancy. The tenant stated that upon vacating the rental unit on September 15, 2018, the landlord has failed to return the \$500.00 security deposit, has kept ½ of the monthly rent for September 2018 and as well has failed to provide compensation of \$1,300.00 for complying with the notice to end tenancy.

The landlord argued that the tenant's \$500.00 security deposit and ½ of the monthly rent for September 2018 equal to \$650.00 were returned to the tenant on November 5, 2018.

The tenant also seeks compensation as the landlord has failed to use the rental unit for the stated purpose as per the 2 months notice for landlord's use. The tenant stated that the landlord has not occupied the rental property and has since re-rented it to a new tenant.

The landlord confirmed that due to the circumstances the landlord was unable occupy the rental property. The rental space was meant for the landlord's father who was living out of the country. The landlord stated that possession of the rental unit was not returned until mid September of 2018 and because of this the father's original flight was rebooked. When the father re-booked his flight, he suffered a health issue preventing him from travelling and as such the trip was delayed. The landlord also discovered that the rental unit was left damaged which required repairs. The repair work started in

November and did not finish until March of the next year. The landlord stated that his father now suffers a health problem that prevents him from travelling. The landlord stated because of this change in circumstances the rental property was re-rented in April 2019.

The tenant also seeks recovery of bus pass costs of \$4,176.00. The tenant states that as the landlord failed to comply with the notice to end tenancy by taking steps to have his father occupy the rental space. The tenant states that he incurred these costs as a result of moving. No details of these costs were provided.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the evidence of both parties and find that the tenant has failed to establish a claim for return of the original \$500.00 security deposit. A review of the tenant's evidence shows an item "LandlordChequePayment" for \$1,020.00 dated November 28, 2018 and details "return deposit and rent". On this basis, I find that the tenant has failed.

On the tenant's claim for return of $\frac{1}{2}$ of the monthly rent for September 2018, I find that the tenant has failed. Both parties confirmed that the tenant vacated the rental unit on September 15, 2018. As listed above, the "LandlordChequePayment" shows that partial rent equal to \$520.00 was returned. The landlord provided undisputed evidence that this was returned both parties confirmed the tenant had occupancy and was using the rental space for $\frac{1}{2}$ of the month. Neither party provided any details on the calculation of the returned rent. This portion of the tenant's application is dismissed.

On the tenant's claim for compensation under section 51 of the *Act* for complying with a notice to end tenancy under section 49. I find that the tenant has established a claim for the \$1,300.00 sought. I make this finding as the landlord provided no submissions/comment on whether this was paid to the tenant and as both parties have

confirmed that the tenant vacated the rental unit in compliance with the issued notice. On this basis, the tenant has been successful.

Section 51 (2) of the Act states in part that a landlord who gives notice under section 49 must pay the tenant, in addition to the amount payable under section (1) an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case, it is clear based upon the undisputed evidence of both parties that the landlord did serve the tenant with a notice under section 49 of the Act. The landlord provided undisputed details that possession of the rental unit was not returned until mid September of 2018 and because of this the father's original flight was rebooked. When the father re-booked his flight, he suffered a health issue preventing him from travelling and as such the trip was delayed. The landlord also discovered that the rental unit was left damaged which required repairs. The repair work started in November and did not finish until March of the next year. The landlord stated that his father now suffers a health problem that prevents him from travelling. The landlord stated because of this change in circumstances the rental property was re-rented in April 2019. Pursuant to section 51 (3) the landlord may be excused from paying the tenant the amount required under section (2) if, in the director's opinion, extenuating circumstances prevented the landlord from using the rental unit for that stated purpose as per the notice. As such, I find that the landlord's circumstances of the father's health prevented the stated purpose of that notice and find that the landlord is excused from paying the tenant. This portion of the tenant's claim is dismissed.

On the last portion of the tenant's claim, \$4,176.00 for recovery of costs for bus passes, I find that the tenant's claim has failed. The tenant seeks compensation for recovery of transportation costs, but section 51 (2) of the Act only provides for compensation for non-compliance for the using the rental space for the stated reason. On this basis, I find that the tenant is not entitled to compensation claim. This portion of the claim is dismissed.

The tenant has established a claim for \$1,300.00. The tenant having been partially successful is entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$1,400.00.

This order must be served upon the landlord. Should the landlord fail to comply with the 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 *Residential Tenancy Act*.

Dated: October 7, 2019

Residential Tenancy Branch