



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The tenant has applied for a monetary order in the amount of \$12,133.65 for the return of double their security deposit, for compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant, an articling student for the tenant PS (articling student), counsel who was observing the articling student MM (observing counsel), the landlord and counsel for the landlord AE (counsel) attended the teleconference hearing. The tenant and the landlord gave affirmed testimony, and all participants were provided the opportunity to present their documentary evidence prior to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding the service of documentary evidence. As a result, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Has the tenant provided sufficient evidence to support a monetary claim under the Act?
- Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The tenant testified that they vacated the rental unit on July 25, 2017. The landlord testified that the tenant vacated between July 23 and 25, 2017. The articling student stated that the tenant waited until July 17, 2019 to file their application against the landlord due to injuries in 2017. The tenant's application was filed 8 days prior to the statutory deadline to make a claim under the Act, which is two years from the end of tenancy date.

The landlord referred to a previous decision dated July 28, 2017 (previous decision). The file number of the previous decision has been included on the cover page of this decision for ease of reference. In the previous decision, the landlord was granted an order of possession and a monetary order in the amount of \$8,250.00 for unpaid rent. In the previous decision it reads that the tenancy ended on July 25, 2017, the effective date of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice). I also note that the tenant applied for a Review Consideration of the previous decision, which was dismissed.

The tenant's monetary claim of \$12,133.65 listed on the application does not match the Monetary Order Worksheet submitted (monetary worksheet) amount of \$12,031.40 submitted in evidence, which states:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Double the security deposit of \$1,375.00	\$2,750.00
2. Canada post mail forwarding	\$83.65
3. 5.5 months of rent for second-hand smoke	\$5,500.00
4. Moving costs	\$897.75
5. Damage to personal belongings	\$2,800.00
TOTAL	\$12,031.40

Regarding item 1, the tenant and landlord confirmed that the tenant has not provided the landlord with the tenant's written forwarding address. In addition, the application itself does not constitute a written forwarding address and as section 39 of the Act provides only 1 year from the end of the tenancy for the tenant to provide their written forwarding address, I dismiss this portion of the tenant's claim as the tenant is not entitled to the return of their security deposit once the tenant has waited beyond 1 year from the end of tenancy date to provide their written forwarding address to the landlord, which I will describe further below.

Regarding item 2, the tenant has claimed for mail forwarding costs of \$83.65, which was dismissed without leave to reapply due to insufficient evidence during the hearing, as there is no remedy for mail forwarding costs as the tenant was evicted for failing to pay rent, which is supported by the previous decision. As a result, I find that this item is a frivolous claim, which I will address further below.

Regarding item 3, the tenant testified that they are claiming \$5,500.00 for 5.5 months of rent returned due to second hand smoke for the months of February, March, April, May, June and July of 2017. The tenant's claim for May, June and July of 2017 was immediately dismissed as the tenant failed to pay rent for those months, and therefore I find it both frivolous and vexatious to apply for the return of rent that was never paid to the landlord. Regarding rent for February, March and April of 2017, the tenant testified that they did not write to the landlord to complain of the second-hand smoke until April 27, 2017, which I find fails to meet section 7 of the Act, which I will describe later in this decision. As a result, this portion of the tenant's claim was also dismissed during the hearing without leave to reapply, due to insufficient evidence.

Regarding item 4, the tenant has applied for \$897.75 for moving costs, which was dismissed for the same reason stated in item 2 above. Furthermore, as the tenant was lawfully evicted for failing to pay rent as noted in the previous decision, I find that this item is a frivolous claim, which I will address further below.

Regarding item 5, the tenant applied for \$2,800.00 for damage to personal belongings. The tenant testified that they did not have tenant insurance during the tenancy and as a result, I find that I did not need to consider any further submissions regarding this item as I find the tenant failed to meet the obligation under section 7 of the Act. I will explain this in further detail below. This item was dismissed without leave to reapply, as I find the tenant failed to comply with section 7 of the Act by failing to arrange for tenant insurance, which is not the responsibility of the landlord at any time during a tenancy.

Analysis

Based on the above and the evidence submitted and presented, and on a balance of probabilities, I find the following.

Test for damages or loss

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 in sections 7 and 67 of the Act. Accordingly, 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 is reasonable to minimize the damage or loss.

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 what is reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In addition, section 7(2) of the Act applies and states:

Liability for not complying with this Act or a tenancy agreement

7(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.**

[Emphasis added]

Item 1 - The tenant and landlord confirmed that the tenant has not provided the landlord with the tenant's written forwarding address. Section 39 of the Act applies and states:

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this Act, **if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,**

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

[Emphasis added]

Based on the above, and considering that the tenancy ended on July 25, 2017, I find the tenant failed to serve the landlord with their written forwarding address within one year of the end of tenancy, and that the landlord may keep the security deposit as the tenant has extinguished their right to the return of the security deposit. Accordingly, I dismiss this portion of the tenant's claim due to insufficient evidence, without leave to reapply.

Item 2 – The tenant has claimed for mail forwarding costs of \$83.65, which was dismissed without leave to reapply due to insufficient evidence during the hearing, as there is no remedy for mail forwarding costs under the Act when a tenant has been lawfully evicted for failing to pay rent as supported in the previous decision. Therefore, I find this to be a frivolous claim and that section 62(4)(c) of the Act applies, which states:

Director's authority respecting dispute resolution proceedings

62(4) The director may dismiss all or part of an application for dispute resolution if

(c) the application or part is frivolous or an abuse of the dispute resolution process.

[Emphasis added]

Item 3 - The tenant testified that they are claiming \$5,500.00 for 5.5 months of rent returned due to second hand smoke for the months of February, March, April, May, June and July of 2017. As indicated above, the tenant's claim for May, June and July of 2017 was immediately dismissed as the tenant failed to pay rent for those months, and therefore I find it both frivolous and vexatious to apply for the return of rent that was never paid to the landlord. Regarding rent for February, March and April of 2017, the tenant testified that they did not write to the landlord to complain of the second-hand smoke until April 27, 2017, which I find fails to meet both part four of the four-part test for damages or loss described above and section 7 of the Act described above. Therefore, I find this entire portion of the tenant's claim to be frivolous under section 62(4)(c) of the Act and is dismissed without leave to reapply.

Item 4 - The tenant has applied for \$897.75 for moving costs, which was dismissed without leave to reapply for the same reason stated in item 2 above. And consistent with item 2 above, as the tenant was lawfully evicted for failing to pay rent as noted in the previous decision, I find that this item is also a frivolous claim pursuant to section 62(4)(c) of the Act.

Item 5 - The tenant applied for \$2,800.00 for damage to personal belongings. The tenant testified that they did not have tenant insurance during the tenancy and as a result, I find that I did not need to consider any further submissions regarding this item as I find the tenant failed to meet the obligation under section 7 of the Act. In addition, I also find that the tenant failed to meet part four of the four-part test described above. I also note that the landlord is not the tenant's insurer and that the responsibility to have tenant's insurance is solely the responsibility of the tenant.

As the tenant's claim has no merit and has found to be frivolous, I do not grant the filing fee.

Conclusion

The tenant's application is dismissed in its entirety, has no merit and is frivolous.

The filing is not granted.

This decision will be emailed to the parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 14, 2019

Residential Tenancy Branch