



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCT MNRT MNSD

Introduction

This hearing, reconvened from an earlier hearing on August 26, 2019, dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary award for damages and loss pursuant to section 67;
- A monetary award for compensation for emergency repairs pursuant to section 33; and
- A return of the security deposit pursuant to section 38.

The landlord did not attend this hearing which lasted approximately 25 minutes. The teleconference line remained open for the first 10 minutes of the hearing and the Notice of reconvened Hearing was confirmed to contain the correct hearing information. The tenant attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The interim decision of August 26, 2019 provides that:

The Parties are allowed to serve each other to by email and have confirmed their knowledge of each others email addresses.

The tenant testified that they had served the landlord with their application and evidence by email sent on August 27, 2019. The tenant provided a screenshot showing the email package sent to the email address confirmed by the landlord. Based on the evidence I find that the landlord was sufficiently served in accordance with sections 71, 88 and 89 of the Act on August 27, 2019.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to a return of the security deposit for this tenancy?

Background and Evidence

The monthly rent for this periodic tenancy was \$935.00 payable on the first of each month. A security deposit of \$450.00 was paid by the tenant at the start of the tenancy. No condition inspection report was prepared at either the start or the end of the tenancy. The landlord returned \$400.00 of the security deposit but retains \$50.00. The tenant did not give authorization that the landlord may retain any portion of the deposit.

This tenancy ended in accordance with a 2 Month Notice to End Tenancy for Landlord's Use dated February 2, 2019, on April 30, 2019. The reason provided on the 2 Month Notice for the tenancy to end is that the rental unit will be occupied by the landlord or a close family member.

The rental unit is a basement suite in a detached home. The landlord occupies the main floor unit with other occupants. The tenant testified that since vacating the rental unit they have been informed by the other occupants of the landlord's suite that the landlord does not intend to move into the rental suite. The tenant submitted evidence of construction and renovation taking place on the rental property and says that the landlord is not occupying the rental suite.

The tenant submits that they performed some work to the rental property walls as they are a trained carpenter. The tenant seeks a monetary award in the amount of \$70.00 for work they performed as cost of emergency repairs.

The tenant also submits a monetary award worksheet setting out other items including storage fees, alternate accommodations, and transportation costs totalling \$1,208.75 which they claim.

Analysis

Residential Tenancy Policy Rule of Procedure 3.7 provides that evidence submitted by a party must be organized, clear and legible. I find that both parties submitted numerous pieces of individual evidence in a haphazard and poorly organized manner. The parties filed many individual files in a variety of formats instead of a single pdf file

with numbered pages. The file names are inconsistent and unclear as to their contents so that it is confounding for the reader. Files are uploaded non-sequentially in no discernable order so that locating individual pieces of evidence is difficult and time consuming. While I have not excluded any of the documentary evidence of either party, I find that the poor presentation detrimentally affects the strength of submissions and the parties are advised to submit all evidence in a single numbered pdf file containing only relevant materials.

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.

I find there is insufficient evidence in support of the tenant's claim for storage fees, alternate accommodations and transportation costs. I find that these are all costs that the tenant would have incurred in any event after the tenancy had ended and they are not attributable to any violation by the landlord. Furthermore, the tenant has provided little substantive evidence showing that the amounts claimed are the actual costs incurred. Accordingly, I dismiss this portion of the tenant's application.

Section 33 of the *Act* describes "emergency repairs" as those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures
- the primary heating system
- damaged or defective locks that give access to the rental unit
- the electrical systems
- in prescribed circumstances, a rental unit or residential property

The Act further provides that:

33(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

33 (5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

I find that there is insufficient evidence in support of the tenant's claim for a monetary award on the basis of emergency repairs. The tenant testified that the nature of the work performed pertained to carpentry work on the walls of the unit and had nothing to do with the electrical systems. I find that the tenant's description of the nature of repairs to not correspond to the issues which are considered emergency repairs under the Act.

Additionally, there is little evidence supporting the amount of \$70.00 claimed by the tenant. There are no receipts, invoices or estimates provided and the only evidence of correspondence between the parties is a truncated text message conversation on one instance. I find that the tenant has not shown on a balance that the amount claimed arises from emergency repairs as defined under the Act, nor that the amount has evidentiary basis. As such, I dismiss this portion of the tenant's application.

Section 51(2) of the *Act* states that a landlord or, the purchaser who asked the landlord to give the notice must pay the tenant an amount that is equivalent to 12 times the monthly rent payable under the tenancy agreement if:

- (a) 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
- (b) 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 the 2 Month Notice the landlord indicated that the rental unit will be occupied by the landlord or close family member.

The tenant disputes that the rental suite is being occupied by the landlord, their family member, or by anyone. The tenant submits that there is ongoing construction work occurring at the rental building and they have been told by another occupant of the building that the landlord is not intending to move into the suite.

I find that the tenant's evidence to be insufficient to meet their burden of proof and establish that the rental unit is not being used for the purpose stated on the 2 Month Notice. I find that the tenant's observations of ongoing work at the rental property to be insufficient to establish that the rental unit is unoccupied. The few photographs submitted by the tenant of the exterior of the building show some work being performed but I find it is a considerable leap to conclude that therefore the rental suite is unoccupied. I find the tenant's hearsay evidence of a conversation they claim they had with an occupant of the building to have little weight. I do not find the tenant's testimony that the landlord had installed a large television in the upstairs suite as evidence of the landlord's intention to remain upstairs to be supported in the evidence or particularly credible. Based on the totality of the evidence I find that the tenant has not met their evidentiary burden to demonstrate that the landlord has not taken steps to accomplish the stated purpose for ending the tenancy. Accordingly, I dismiss this portion of the tenant's application.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

I accept the tenant's evidence that they provided their forwarding address to the landlord on May 13, 2019. I accept the evidence that the landlord has made partial

payment but failed to return \$50.00 of the security deposit for this tenancy. I accept that the tenant has not provided written authorization that the landlord may retain any portion of the deposit.

Furthermore, I accept the evidence that no condition inspection report was prepared at any time during the tenancy. Section 36 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

Based on the evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within 15 days of receiving the tenant's forwarding address. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$100.00 Monetary Order, double the value of the \$50.00 portion of the security deposit withheld by the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$100.00. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: November 4, 2019

Residential Tenancy Branch