



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

On August 6, 2019, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing with C.D. attending as an advocate for the Tenant. As well, S.M. attended the hearing as a witness. The Landlord did not make an appearance during the 47-minute hearing. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package to the Landlord’s address by registered mail on August 15, 2019 (the registered mail tracking number is on the first page of this decision). The tracking history indicated that this package was signed for and delivered on August 16, 2019. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenant advised that she served her evidence to the Landlord’s address by registered mail on October 11, 2019 (the registered mail tracking number is on the first page of this decision). The tracking history indicated that this package was signed for and delivered on October 17, 2019. As this evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, this evidence was accepted and will be considered when rendering this decision.

On August 15, 2019, the Tenant amended her Application to remove the second Applicant from the Application. During the hearing, the Tenant acknowledge her desire to have this party removed. As such, the Application was amended to remove this party.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on February 1, 2017 and that the tenancy ended when the Tenant was forcibly evicted by a bailiff on August 25, 2017, via a Writ of Possession. Rent was established at \$1,200.00 per month and it was due on the thirty-first day of each month. A security deposit of \$600.00 was paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

C.D. advised that the parties had engaged in a settlement decision dated July 27, 2017 whereby the parties had agreed that the Landlord would be responsible for half of the utilities (the relevant file numbers are listed on the first page of this decision). As such, the Tenant is seeking compensation in the amount of **\$336.00** as this was the Landlord's share of the utilities. She stated that the utility bills were not submitted as evidence as the Tenant became homeless in January and she had difficulty keeping documents. As well, as the Tenant is on disability, she was not able to get copies of these bills from the utility companies. She stated that there was no specific breakdown of this amount and no details could be provided to explain how this amount was determined; however, this was the cost for utilities for July and August 2017.

C.D. advised that the Tenant is seeking compensation in the amount of **\$1,800.00** for February 2017 rent and extra rent that was paid. The Tenant stated that she was not able to move into the rental unit until February 25, 2017 and she attempted to explain this to the Arbitrator in the previous hearing. The Tenant became agitated and provided unclear statements about what was discussed at this previous hearing. She stated that she had a friend helping her in that hearing and that the "Landlord provoked themselves to self-win." She went on to provide random details of the tenancy with respect to other

tenants living in the downstairs unit, she stated that the previous Arbitrator “threw out” this claim, and she repeated several times that she “doesn’t want to talk about it anymore.” A receipt with many indistinguishable markups was provided as documentary evidence to support her position that she made these overpayments.

Finally, the Tenant advised that she was seeking compensation in the amount of **\$2,400.00** because rent for September and October 2017 was paid in advance to the Landlord but she was not permitted to stay there. She stated that this rent was paid at the end of August 2017 before she was evicted but then she contradictorily stated that “she couldn’t make it until July 31, 2017.” I attempted to clarify this statement from the Tenant to see if she meant that she gave up vacant possession of the rental unit on July 31, 2017 and she confirmed this. She then submitted that rent was paid to the Landlord in cash, by the Tenant’s son, on September 1, 2017; however, a receipt was not provided. When it was brought up that it did not make sense why she would pay rent to the Landlord after she gave up vacant possession of the rental unit at the end of July or alternately, if she had been physically evicted by a bailiff on August 25, 2017, she simply stated that the Landlord told her she could stay there.

S.M. stated that the Landlord gave the Tenant a notice at the end of August and it had “something to do with late rent”. He said that the Tenant had no place to go and had an agreement from the Landlord for her to stay there. He advised that he gave the Landlord \$2,400.00 in cash at the beginning of September 2017, but he did not receive a receipt for this transaction. He confirmed that the bailiffs physically removed the Tenant, but he did not remember when this happened. Neither the Tenant nor S.M had any proof that this rent was paid to the Landlord.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

With respect to the Tenant’s claims for compensation, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

While the Tenant brought forth multiple claims for compensation, the first one I will address is with respect to the utilities. I find it important to note that the burden of proof lays on the party making the Application to establish that this amount of utilities is owed by the Landlord. While I acknowledge that the previous settlement agreement noted that the Landlord would be responsible for 50% of the utilities, the Tenant has not provided any documentation to establish the applicable time period for these utility costs, for what types of utilities this claim applies to, or proof that she spent \$672.00 on utilities. As the Tenant has provided insufficient evidence to corroborate this request, I am not satisfied she has established a valid justification for this claim. Consequently, I dismiss this portion of her claim in its entirety.

With respect to her claim for lost February 2017 rent and a subsequent overpayment of rent, I find it important to note that the Tenant acknowledged already discussing this issue with a previous Arbitrator. While she expressed that this issue was not considered, I find it important to note that the parties engaged in a settlement agreement that was a final and binding resolution of their Applications. The Tenant acknowledged that these matters were brought forth during the previous hearing. As such, I am unable to reconsider matters that had already been addressed by a previous Arbitrator. Furthermore, as the settlement agreement was a final, binding resolution that both parties agreed to, I am unable to change the outcome of that decision. As such, I dismiss this portion of the Tenant's claim in its entirety.

Finally, regarding the Tenant's claim of rent paid for September and October 2017, the burden of proof is on the Applicant to submit evidence to support her allegation that she paid this rent. While she testified to this and had a witness corroborate this submission, there has been insufficient evidence provided that supports that this was in fact paid to the Landlord. Furthermore, the consistent evidence is that the Tenant was forcibly removed from the rental unit by a bailiff, possibly on August 25, 2017. If the Landlord was forced to the point of having the Tenant removed by a bailiff, I find it unlikely that the Landlord would then consider accepting rent a week later to allow the Tenant to move back in and start a new tenancy. When considering the testimony of the Tenant and S.M. and the insufficient evidence provided, and when weighing this in conjunction with the purported allegation of rent being paid, on a balance of probabilities I find it

doubtful that rent for September and October 2017 was paid by the Tenant. Ultimately, I dismiss this claim in its entirety.

Conclusion

I dismiss the Tenant's Application for monetary compensation without leave to reapply.

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 8, 2019

Residential Tenancy Branch