



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT**

Introduction

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

- Authorization to recover the filing fees from the landlord pursuant to section 72; and
- A monetary order for damages or compensation pursuant to section 67.

Both the tenant and the landlord attended the hearing. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Preliminary Issue

At the commencement of the hearing, I advised the tenant that his monetary claim in the amount of \$42,811.65 exceeded the monetary limit of a claim under the *Act*. The tenant advised he would not pursue his claim for time to prepare his legal case, reducing his claim by \$9,411.65.

Issue(s) to be Decided

Is the tenant entitled to authorization to recover the filing fees from the landlord pursuant to section 72 and a monetary order for damages or compensation pursuant to section 67?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to any of the documents they specifically presented to me during testimony. While I have turned my mind to all the documentary

evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant gave the following testimony. On November 8, 2018, the tenant's sister signed a fixed term tenancy agreement with the landlord. The term was for 3 months, commencing January 1, 2019 and ending on March 31, 2019. The understanding between the parties was that the sister would enter into the tenancy agreement with the landlord as she was Canadian resident, but the actual occupant of the rental unit would be the tenant named on this application and his family ("tenant"). This tenant lives abroad in the United States. The tenant's name appears handwritten on a second copy of the tenancy agreement entered into evidence by both the landlord and the tenant, however there is no signature of the tenant on the document. There is a date of January 7, 2019 next to the tenant's name on the subsequent document.

The tenant testified that the landlord allowed him to move in with his family on December 31, 2018. The same night, the tenant's wife discovered her father had died, prompting the tenant to phone the landlord on January 1, 2019 to terminate the fixed term tenancy early. The tenant, his sister and the landlord met at the rental unit to discuss ending the tenancy on January 2nd. According to the tenant, the landlord agreed to release him from the tenancy, return his rent for January and return the security deposit if the tenant would send him an email. The tenant sent the landlord a notice to end tenancy on January 2nd, indicating *"we will vacate the apartment and take our belongings out by the end of day on Jan. 3, 2019. We will hand in the keys on Jan 3, 2019."* A copy of the email message was provided as evidence by the landlord.

The tenant testified the landlord's demeanor changed after getting the email. The landlord demanded the full rent until the end of the fixed term. At noon on January 3rd, the tenant says he 'cancelled the deal' and would not vacate. He went to stay at his sister's place in Washington State that night and got an email from the landlord indicating the landlord had gone into the rental unit without notice. He came back to the building at approximately 10 p.m. to discover his key fob no longer worked and he couldn't access or leave the building without one. Minutes later, a neighbor let him into the building. The tenant accessed the unit, looked around, obtained some medication and left – all within a 2-hour span. The neighbor also let him out of the building.

The tenant says the landlord 'touched and displaced his belongings' while there. \$400.00 cash went missing, however the tenant admits he cannot definitively prove the landlord took it. He seeks reimbursement for this from the landlord nonetheless.

The tenant seeks the following compensation:

\$10,000.00 for an 'illegal entry' by the landlord. He does not have any basis for determining this figure, however he feels it is a good 'punishment' for the landlord and will adequately compensate him.

\$12,500.00 for locking him in and out of the rental unit the night of January 3rd. Despite having the good fortune of gaining access to the building by the neighbor and getting out again, he should be compensated for having his fob deactivated this night. The tenant did not have any basis for arriving at the amount sought for compensation.

\$10,000.00 for blocking access to his medication. The tenant acknowledged he was able to get into the rental unit the night of January 3rd and he did not suffer from any ill effects from delayed access to them – although he could have. He believes \$10,000.00 would sufficiently compensate him for the off-chance he couldn't get to them when he needed them. The prescription medications were for cold sores which he didn't have at the time (although he could have) and thyroid regulation which would make him sleepy and makes him dysfunctional without it.

The tenant also seeks \$250.00 for fees paid for dispute resolution applications and \$250.00 for printing and postage.

The landlord provided the following testimony. After receiving the tenant's notice to end the tenancy by email on January 2nd, a date for condition inspection report of 6:00 on January 3rd was agreed upon. The landlord provided video footage showing the tenant moving his belongings out of the building prior to 6:00 p.m. on January 3rd. The tenant failed to attend the condition inspection at the agreed time of 6:00 p.m. and so he conducted it in the tenant's absence. The landlord noted there was no damage to the unit and was satisfied the tenancy ended in accordance with the tenant's notice. The landlord deactivated the tenant's key fob as the tenancy had ended.

Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

The tenant alleges that due to the landlord deactivating his key fob the night of January 3, 2019, the tenant 'could have' missed retrieving his medication and he 'could have' been denied access to the building. The tenant testified he successfully gained entry to the building by his neighbour within minutes of arriving; he immediately entered the rental unit using his key; retrieved his medication and exited the building with the neighbour's assistance. All was done within a span of less than 2 hours. The tenant's supposition that he 'could have' suffered loss is both unreasonable and impossible to rely upon as a basis for compensation under section 67. I find the tenant has not provided sufficient proof to demonstrate that he has suffered from any damage or loss resulting from the tenancy. These portions of the tenant's claim are dismissed.

The tenant also claims there was what he describes as an 'illegal entry' to the rental unit at 6 p.m. on January 3rd. I find the tenant has not proven, on a balance of probabilities, that there was such a violation. I am satisfied the tenant gave the landlord a notice to end tenancy, ending the tenancy on January 3rd. I find the landlord attended the rental unit on the agreed upon date and time to conduct the condition inspection report and the tenant failed to attend. The landlord was within his right to conduct the inspection in the absence of the tenant pursuant to section 35(5) of the *Act* and did so accordingly. This portion of the tenant's claim is also dismissed as he has provided insufficient evidence to prove there was a violation of the *Act*, regulations or tenancy agreement.

Beyond not being able to prove the existence of the damage or loss, or that the perceived loss resulted from any violation of the *Act*, regulations or tenancy agreement, the tenant has also not been able to come up with any kind of value for the losses he seeks. The tenant clearly stated he did no research to determine an appropriate estimate of his losses, nor did he consult case law for similar cases where an applicant was awarded compensation. He testified he just wanted to 'punish' the landlord for the perceived violations and 'felt' it would be sufficient monetarily to him. For failure to establish the value of his perceived damage or loss, I must dismiss the tenant's application in accordance with point 3 of rule 6.6.

The tenant admits he has no proof the landlord took his \$400.00 cash. The tenant has not proven this portion of his claim pursuant to rule 6.6 and I dismiss it.

An arbitrator can only award filing fees paid to commence an application pursuant to section 72 of the *Act*. Disbursements paid to print and serve documents are not recoverable under the *Act* and this portion of the tenant's claim is dismissed.

The tenant also seeks recovery of filing fees paid for previous arbitrations or review considerations that were either dismissed with leave to reapply or unsuccessful. Pursuant to section 72 of the *Act*, it is within the discretion of an arbitrator to award or deny a claim for filing fees and I decline to award the tenant previous filing fees or the filing fee for the within application that was also unsuccessful.

Conclusion

The tenant's application is dismissed 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: December 30, 2019

Residential Tenancy Branch