



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNDS, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, for a monetary order for money owed or compensation under the Residential Tenancy Act, "the ACT", and for the return of the security deposit.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on November 20, 2019, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance with the Act.

Preliminary Issue

The tenant testified that they vacated the rental unit on November 30, 2019, based on the notice to end tenancy. Therefore, I do not need to consider the tenant's application to cancel the notice to end tenancy, as the tenancy has legally ended.

In this case, I find the tenant's claim for the return of the security deposit is premature, as they made their application for the return of their security deposit prior to the tenancy ending.

Therefore, I dismiss this portion of the tenant's claim with leave to reapply.

The tenant must ensure they comply with section 38 of the Act, and the service provisions under section 88 of the Act, when requesting the return of the security deposit.

Issue to be Decided

Is the tenant entitled to recover monetary compensation for loss or money owed?

Background and Evidence

The tenancy began in July 2016. Rent in the amount of \$1,200.00 was payable on the first of each month. A security deposit of \$600.00 was paid by the tenant. The tenancy ended on November 30, 2019.

The tenant claims as follows:

a.	Compensation for loss of use of premise from October 15, 2019, to November 30, 2019, equal to value of rent	\$1,800.00
b.	Meals	\$ 403.43
c.	Paper plates, cups, utensils and hot plate	\$ 61.67
d.	Loss of work, stress due to cleaning	\$ 182.00
	Total claimed	\$2,447.10

Compensation for loss of use of premise

The tenant testified that the landlord had removed the kitchen in the rental unit on October 15, 2019. The tenant stated that they were unable to use any portion of the kitchen and did not have the use of a stove, cupboards or sink.

The tenant testified that they were without a stove for about three weeks, and the kitchen was not fully finished by the time they had vacated the premises on November 30, 2019.

The tenant testified that they should be entitled to recover the amount that is equal to 1 ½ months of rent for the loss of use and quiet enjoyment, in the amount of \$1,800.00.

Filed in evidence are photographs dated October 14, 2019, showing a portion of the kitchen prior to the removal. Filed in evidence are photographs dated November 8, 2019, showing very minor deficiencies, such as wood in a cupboard and the exhaust fan missing.

Meals

The tenant testified that because they were unable to use the kitchen that they had to eat, breakfast, lunch and dinner out. The tenant stated that they should be reimbursed for these costs.

Filed in evidence are receipts, which I have reviewed and considered.

Paper plates, cups, utensils and hot plate

The tenant testified that they had to buy paper plates and cups. The tenant stated that they had their own cups and plates; however, they did not have a kitchen sink. The tenant confirmed there was a sink in the bathroom; however, felt a bathroom sink should not be used to wash dishes.

No evidence was given on the purchase of a hot plate.

Loss of wages

The tenant testified that they had to leave work early on October 16, 17, 20, 22, and 24, 2019, due to the repairs in the kitchen. The tenant stated that they would go to the rental unit and clean it, picking up nails and other debris. The tenant stated they had to do this prior to picking up their young child from daycare, as they had to ensure the rental unit was safe.

Filed in evidence is a calendar.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Compensation for loss of use of premise

In this case, the tenant seeks compensation from October 15, 2019 to November 30, 2019. However, I find the evidence submitted by the tenant does not support the time frame they have claimed. The photographs dated November 8, 2019, submitted as evidence, show minor deficiency, such as missing an exhaust fan and wood in the cupboard. Those minor deficiencies does not justify any compensation after November 7, 2019.

Although the tenant may have been entitled to compensation for the loss; however, the evidence before me, was the tenant was evicted for nonpayment of rent for the month of November 2019.

I find the tenant has not established a loss, when they have failed to pay the rent. Any loss the tenant may have had, would not exceed the rent owed. Therefore, I dismiss this portion of the tenant's claim.

Meals

In this case, although I stated at the hearing the tenant maybe entitled to reasonable compensation for meals; however, I have reviewed the tenant's receipts filed in evidence. The receipts do not support the tenant and their child had eaten all their meals out. The receipts are not for three meals a day as claimed by the tenant at the hearing and in their monetary worksheet.

As an example, the receipt issued for October 16, 2019, is for one meal in the amount of \$61.54. I find this amount appears high for one adult and a child. It was not three meals as claimed. Further, the receipt is a debit receipt and does not show what was actually purchased. Therefore, I cannot determine if this was a reasonable cost.

As a second example, the receipt issued for October 17, 2019, is for one meal in the amount of \$116.22. I find this amount is unreasonable for one adult and a child. It was not for three meals as claimed in their monetary worksheet. Further, the receipt is a debit receipt and does not show what was actually purchased.

Based on the misleading evidence and testimony of the tenant, I dismiss this portion of the tenant's claim.

Paper plates, cups, utensils and hot plate

I am not satisfied that paper plates and utensils were required. The tenant had their own plates and utensils to use. The tenant had water in the rental unit and could have used the water to wash their dishes. I find it was a personal choice. Temporary inconvenient is not grounds to purchase such products.

The tenant did not provide testimony on the purchase of a hot plate. The tenant's evidence was that they had to eat their meals out. This leads me to believe the tenant may have provided misleading testimony.

Based on the above, I dismiss this portion of the tenant's claim.

Loss of wages

In this case, I am not satisfied the tenant lost wages as claimed. The tenant provided a calendar; however, they did not provide any evidence, such as paystubs or a letter from their employer that the tenant lost wages for the dates specified. Therefore, I am not satisfied the tenant has established a loss of wages. Therefore, I dismiss this portion of the tenant's claim.

Considering the above, I dismiss the tenant's application without leave to reapply.

Conclusion

The tenant's application is dismissed.

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: January 13, 2020

Residential Tenancy Branch