



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the remainder of the tenant's security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 29 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant stated that the landlord was served with a copy of the tenant's application for dispute resolution hearing package on November 7, 2019, by way of registered mail to the address provided by the landlord in the parties' written tenancy agreement. The tenant provided a Canada Post tracking number verbally during the hearing. She said that the mail was returned to her as unclaimed. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application on November 12, 2019, five days after its registered mailing.

Issues to be Decided

Is the tenant entitled to a return of the remainder of her deposits?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the tenant's documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant testified regarding the following facts. This tenancy began on November 1, 2016 and ended on October 31, 2017. Monthly rent in the amount of \$1,200.00 was payable on the first day of each month. A security deposit of \$600.00 and a pet damage deposit of \$600.00 were paid by the tenant and the landlord returned \$216.75 to the tenant on November 21, 2017 and retained \$983.25. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. Move-in and move-out condition inspection reports were completed for this tenancy. The tenant did not give the landlord written permission to keep any amount from the deposits. The tenant did not receive a Residential Tenancy Branch ("RTB") application from the landlord to retain the deposits. The tenant provided a written forwarding address to the landlord in a letter that was sent by registered mail on March 13, 2019. The tenant provided a Canada Post tracking number verbally during the hearing for the above mailing. The rental unit is the lower portion of a house, where other occupants were living above.

The tenant seeks a return of the remainder of her deposits of \$983.25 and the \$100.00 filing fee. The tenant also seeks \$3,350.00 for plumbing damages.

The tenant maintained that she was burned by hot water in the shower at the rental unit, when the occupants living upstairs would flush their toilet. She explained that the shower stall was really small, as there was no tub, so there was nowhere to go when she got burned. She said that she reported the issue to the landlord by email. She claimed that the landlord responded that a plumber would come in the summer.

The tenant confirmed that the plumber reduced the pressure of the water from the City to the rental unit. She stated that she spoke to the plumber and he told her that a regulator valve was required. She confirmed that she advised the landlord about the cost of the valve repair and the landlord was upset that she talked directly to the plumber.

The tenant maintained that she did not know how much to ask for, so she requested \$10.00 per day for a period of 335 days for a total of \$3,350.00. She said that the issue was fixed after 335 days into her tenancy. She agreed that she did not ask for a repair order at the RTB because she was in email contact with the landlord. She further agreed that she did not ask for compensation at the RTB until after the end of her tenancy, due to her own depression issues.

Analysis

I find that I have jurisdiction to decide the tenant's application, as her claim was filed within the two-year limitation period under section 60(1) of the *Act*. The tenancy ended on October 31, 2017 and the tenant confirmed that she filed her application in this matter on October 29, 2019.

The tenant confirmed that she filed two prior applications at the RTB for the return of her deposits and the plumbing damages. The tenant did not provide a copy of these previous decisions. I was able to locate these decisions in the RTB database and reviewed them. Both previous RTB decisions were made by different Arbitrators and dismissed the tenant's applications with leave to reapply. The file numbers for both hearings are on the front page of this decision. Therefore, I find that the tenant's current application is not *res judicata*, meaning it has not already been decided previously at the RTB.

Deposits

Section 39 of the *Act* states the following:

- 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.*

The tenant did not provide a written forwarding address to the landlord until March 13, 2019, which is more than one year after the tenancy ended on October 31, 2017, breaching section 39 of the *Act*. Therefore, I find that the landlord is entitled to retain \$983.25 from both of the tenant's deposits. Accordingly, I find that the tenant is not entitled to the return of \$983.25 from her deposits and I dismiss this portion of her application without leave to reapply.

Plumbing Damages

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Residential Tenancy Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the tenant's application for plumbing damages of \$3,350.00 without leave to reapply. I find that the tenant was unable to justify the amount being claimed. She picked a random number, as confirmed by her own testimony. The tenant did not provide any specific dates or details as to when she first noticed the issue, when she first reported it to the landlord, how many times she complained to the landlord, when the plumber came and looked at it, and when it was fixed. She did not provide plumbing records or information regarding her claims that there was a regulator valve issue or that she talked to the plumber about this issue. She did not provide medical records confirming her claims that she was burned by the hot water and suffered pain and injuries.

The tenant provided a copy of one email, dated June 28, 2017, that she sent to the landlord, regarding the shower issue. The tenant did not review or point to any details of this email, during the hearing. This email was sent almost eight months after the tenancy began on November 1, 2016. The tenant did not file an application at the RTB for repairs, nor did she request compensation at the RTB until after she had moved out and was asking for the return of her deposits. Therefore, I find that the tenant failed to meet the four parts of the above test and she is not entitled to compensation.

Filing Fee

As the tenant was unsuccessful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's entire 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: March 26, 2020

Residential Tenancy Branch