



Dispute Resolution Services

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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* (the "Act") for:

- A monetary order for damages or compensation pursuant to section 67;
- An order for the return of a security deposit or pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend the hearing although I left the teleconference hearing connection open until 10:00 a.m. in order to enable the landlord to call into this hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenants both attended the hearing and were represented by co-tenant AS ("tenant"). The tenant testified she served the landlord with the Notice of Dispute Resolution Proceedings package by registered mail on November 22, 2019. The tracking number for the mailing is recorded on the cover page of this decision. The tenant testified that on November 25th, the package was refused by the landlord and it was returned to her. I find the landlord was served with the documents for this hearing in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Can the tenant's security deposit be recovered?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenant provided the following undisputed evidence. The month to month tenancy began on August 1, 2019 with rent set at \$1,100.00 per month payable on the first day of each month. A security deposit of \$550.00 was collected by the landlord which has not been returned to the tenant. The tenant testified that, in accordance with the tenancy agreement, she was to pay 1/3 of the hydro bills and 2/3 of the natural gas for the rental unit, the lower of 2 units in a house. The tenant provided a single page document as the tenancy agreement. This agreement contained two handwritten lines which state:

- Noise in the kitchen area to be kept down at all times before 7 a.m. daily & after 9 p.m. daily
- During the months of June 1st to Sept 15th, there will be no gas bill, providing the fireplace is not in use.

The tenant testified that the tenancy agreement stipulated that she would have exclusive access to two outbuildings on the residential property, a sauna/office and a storage shed. When she moved into the unit, the landlord advised her that his insurance policy wouldn't allow tenant use of the sauna when the owner was not on the property and locked her out. The office and shed were also not available to her.

The tenant testified that her response to the landlord was to either remove the locks and grant access or lower the rent. The landlord did neither and gave her the 'runaround'. Other issues with the tenancy was a non-operative dryer. The tenant testified she repeatedly texted the landlord asking him to fix it and it took a long time to deal with. It took close to a month for the dryer to be fixed after a repairman was called.

Also, the upper unit had an air conditioner unit that leaked water into the lower unit, causing damage to the tenant's furniture and belongings. After a week and a half, a plumber came to inspect. For two weeks, the tenants had to sleep on the floor and listen to industrial dryers while the flooding caused by the leaking air conditioner was fixed. The flood also caused mold to grow in their basement suite. The tenant testified that the air conditioner problem was first reported to the landlord on August 17th and was fixed by August 29th. The problem was fixed by attaching an unattached hose to the pump on the air conditioner unit.

Lastly, the tenant testified that when they first moved in, the unit was dirty and required a trip to the dump to dispose of debris that was there already. The yard was unkept and there was lots of garbage that required disposal. To keep good faith with the landlord the tenant just 'dealt with it'.

On September 29th, the landlord served the tenant with a Two Month's Notice to End Tenancy for Landlord's Use. The tenants moved out on October 31, 2019 and the landlord sold the property. The tenant seeks the final month's rent because she moved out a month early and because the landlord did not compensate her with the equivalent of one month's rent.

The parties did a condition inspection on November 2nd, however no copy of a condition inspection report was provided to her by the landlord. The tenant provided her forwarding address to the landlord via text message on November 12th and the landlord acknowledged receipt of it by text.

The tenant testified that at the conclusion of the tenancy, the landlord asked her to retain \$296.00, as 1/3 of the electricity bill he provided to her on November 14th which she agreed to. From the original \$550.00 security deposit, the tenant seeks to recover the remaining \$254.00.

Analysis

The tenant seeks to recover the portion of the security deposit she paid at the commencement of the tenancy that wasn't returned to her.

The tenant provided her forwarding address on November 12th and filed an Application for Dispute Resolution seeking its return on November 20th. Section 38 states:

38 Return of security deposit and pet damage deposit

- (1) Except as provided in subsection (3) or (4) (a), **within 15 days** after the later of
 - a) the date the tenancy ends, and
 - b) **the date the landlord receives the tenant's forwarding address in writing,**
 - c) the landlord must do one of the following:
 - d) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - e) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

As it was filed 8 days after providing the forwarding address, the tenant filed her application before the time period allowed for the landlord to seek to retain the security deposit or repay it. As the tenant's application was filed prematurely, this portion of the tenant's claim is dismissed with leave to reapply.

The tenant seeks to recover all the rent she paid for the 3 months she stayed in the rental unit, from August to October because the landlord never tried to deal with the deficiencies in the rental unit, because she was promised use of the outbuildings and didn't get it and because she was forced to throw out lots of furniture because it had molded.

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.

Rule 3.7 of the Residential Tenancy Branch Rules of Procedure states that evidence must be organized, clear and legible. For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2". To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

Rule 7.4 states evidence must be presented by the party who submitted it, or by the party's agent.

Although the tenant's testimony was undisputed, the tenant did not provide a copy of the tenancy agreement to show the outbuildings were included in the tenancy agreement. Without this document, the tenant has not provided sufficient evidence to prove that she should be entitled to any compensation for not having access to them. I am not satisfied the tenant has met burden of proof to establish this aspect of her claim

and I dismiss it as a reason to claim recovery of rent for the entire duration of the tenancy.

Second, the tenant claims her furniture was damaged by flooding caused by the leaking air conditioner unit from the upper unit. While she has provided approximately 50 unorganized and unidentified text messages to prove her claim, the tenant did not direct my attention to any photographs of the damaged goods or provide invoices or receipts to prove the value of them. I find the tenant has failed the 4 point test on the 1st point, proving that the damage or loss exists and the 3rd point, the value of the damage or loss.

The tenant testified that she was 'stressed' by the tenancy that lasted 3 months due to the leaking air conditioner unit, as well. The tenant did not direct my attention to any medical reports to corroborate this claim. In light of this, the tenant has not satisfied me she has suffered any compensable loss or that any stress she has suffered was brought about by any violation of the *Act*, regulations or tenancy agreement caused by the landlords.

The same holds true for the dryer repair. The tenant testified the dryer was repaired during the course of the tenancy and was inoperable for approximately one month. Although she had the right to seek an order from the Residential Tenancy Branch for the landlord to have the repair done, the tenant chose not to. The tenant has not shown she has mitigated her claim. Once again, I have not been supplied with, or had my attention directed to any evidence regarding the value of the one month without the dryer and I find the tenant's application fails on the 3rd point.

Lastly, if the rental unit was not reasonably clean at the commencement of the tenancy, this issue should have been raised with the landlord at that time. There is no option for a tenant to seek monetary compensation for cleaning that took place at the beginning of a tenancy after the tenancy ended.

For the above reasons, I find the tenant has failed to prove on a balance of probabilities that she or her co-tenant has suffered any damage or is entitled to have the 3 months of rent returned to her as sought pursuant to section 67 of the *Act*. This portion of the tenant's claim is dismissed.

The tenant also seeks a further one months compensation because she was given a Two Month's Notice to End Tenancy for Landlord's Use.

Section 51 states a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. The tenant testified that after receiving the Two Month's Notice to End Tenancy for Landlord's Use on September 29th, they ended the tenancy early by giving notice to leave on October 31, 2019 as set out in section 50 of the *Act*. Section 50(3) states a notice under this section does not affect the tenant's right to compensation under section 51. Based on the undisputed testimony of the tenant, I find she is entitled to the equivalent of one months rent as set out in section 51 and I award them \$1,100.00.

As the majority of the tenant's claim was not successful, the filing fee will not be recovered by the tenant.

Conclusion

Pursuant to section 67 of the *Act*, I issue a monetary order in the tenants' favour in the amount of \$1,100.00.

The tenant's claim for an order for the return of a security deposit or pet damage deposit pursuant to section 38 is dismissed with 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: April 07, 2020

Residential Tenancy Branch