



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MGEY INVESTCO 604.1 INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: MNDCT FFT
For the landlord: MNRL MNDCL FFL

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (the Act).

The tenant applied for a monetary order in the amount of \$5,000.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee. The landlord applied for a monetary order in the amount of \$5,725.00 for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee.

The tenant, an agent for the landlord MY (agent) and counsel for the landlord (counsel) attended the teleconference hearing. The hearing process was explained, and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the Rules of Procedure, and testimony provided. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant confirmed that they had received the landlord's documentary evidence in June 2020. The tenant, the agent and the landlord's counsel confirmed that the tenant did not serve any documentary evidence on the landlord in support of the tenant's application. As a result, I find the tenant was sufficiently served as required by the Act

with the landlord's application and documentary evidence, and that the tenant did not serve the landlord with any documentary evidence.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) authorizes me to sever unrelated disputes contained in a single application. In this circumstance, the tenant's application and the landlord's unrelated application were joined, and I find that these matters are not sufficiently related to be heard during the same hearing. As a result, and pursuant to section 62(3) of the Act, I order that the landlord's application be adjourned to be heard separately and that I am seized of both matters. Therefore, the landlord and the tenant will receive a Notice of an Adjourned Hearing scheduled for a later date and must call into that future hearing on the date and time indicated in the attached Notice of Adjourned Hearing. Failure to attend the future hearing scheduled for the landlord's application may result in the hearing continuing without the party or parties that fail to attend.

In addition to the above, the parties consented to the amendment of the tenant's application to replace the name of the landlord to the landlord company name, which was amended pursuant to section 64(3)(c) of the Act.

Finally, both parties confirmed their respective email addresses and were advised that the decision and any Notice of Adjourned Hearing would be emailed to the parties at the email addresses confirmed during the hearing.

Issues to be Decided

- Is the tenant entitled to any monetary compensation under the Act?
- If yes, is the tenant entitled to the recovery of their filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on July 1, 2017. The parties agreed that the tenancy ended on March 1, 2018, when the tenant vacated the rental unit. Monthly rent was \$1,875.00 per month and due on the first day of each month. The tenancy agreement indicates that the security deposit was \$897.50, and the pet damage deposit was the same amount.

The tenant stated that their claim of \$5,000.00 is comprised as follows:

1. 2 months of rent due to mould at \$1,875.00 x 2 = \$3,750.00
2. Movers = \$800.00
3. Cleaning = \$250.00
4. Reconnection fees = \$100.00
5. Filing fee = \$100.00

Regarding item 1, the tenant is seeking 100% of the amount of rent paid for January and February 2018 due to water damage in the rental unit. The tenant filed their application on February 27, 2020, which was 2 days before the 2-year deadline under the Act to apply for compensation. The tenant was asked why they waited until 2 days before the 2-year statutory deadline and the tenant stated they “forgot”.

The tenant stated that on January 1, 2018, they called the maintenance person to report the only bathroom sink that was overflowing due to a blockage. The tenant testified that the maintenance person attended the same day and unclogged the bathroom sink and that the maintenance person advised the tenant that the kitchen sink drain was causing the bathroom sink to overflow. The tenant stated that due to tremendous water damage, the tenant should receive all of their rent back for January and February of 2018. The tenant stated that they discovered water damage by walking around the house and that there was 3 inches of water on the bathroom floor of January 1, 2018, which the tenant discovered after finishing the dishes in the kitchen. The tenant stated that the water absorbed under the flooring and that the rental unit was the lowest ground level unit.

The tenant was asked if they ever wrote to the landlord to complain in writing about the January 1, 2018 flood the tenant described. The tenant was vague and stated they complained over the next few weeks, which the agent vehemently disputed.

The agent testified that the tenant wrote to the landlord about a different issue and not flooding in the bathroom as claimed during the hearing. In addition, the agent referred to several documents submitted in evidence, including the results of an inspection, which the tenant confirmed they were present for during the hearing. In one document dated January 25, 2018, the results of the inspection indicate the inside rooms had no water, no rot and no mould, which contradicts the tenant’s verbal testimony.

The parties were advised that the balance of probabilities by the tenant was not reached, based on the documentary evidence supplied by the landlord, which I will address below.

Analysis

Based on the documentary evidence from the landlord and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what is reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what is reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on the above, I afford the landlord's documentary evidence of greater weight than the tenant's disputed verbal testimony. As a result, I find the landlord has successfully provided sufficient rebuttal evidence and that the tenant has failed to meet all four parts of the test for damages or loss under the Act. In addition, I find that since items 2, 3, 4 and 5, all rely on item 1 being successful, that it was not necessary to consider any evidence or testimony from the parties regarding items 2, 3, 4 and 5 as a result.

Finally, as the tenant's application has no merit, I do not grant the filing fee to the tenant. The tenant's application is dismissed without leave to reapply, due to insufficient evidence.

Conclusion

The tenant's application is dismissed without leave to reapply due to insufficient evidence.

The filing is not granted as a result.

This decision will be emailed to both parties.

The landlord's application will be heard at a later date and a Notice of an Adjourned Hearing will be attached to this decision for the landlord's hearing, which will address the landlord's application.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 7, 2020

Residential Tenancy Branch