



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62.

The tenant filed an amendment to the above application on December 17, 2020 for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute resolution, evidence and amendment. I find that the landlord was sufficiently served for the purposes of this *Act*, with the above documents pursuant to section 71 of the *Act*.

Preliminary Issue

Both parties agree that the tenant no longer resides at the subject rental property. I therefore dismiss the tenant's application for an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, as the above claim is no longer applicable as the tenancy has ended.

Issue to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act of the Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on April 1, 2018 and ended on December 1, 2020. Monthly rent in the amount of \$1,250.00 was payable on the first day of each month. This was a verbal tenancy agreement.

The tenant testified that she paid a security deposit of \$625.00 to the landlords, the landlords testified that the tenant paid a security deposit of \$600.00. The tenant testified that she received \$625.00 from the Ministry to pay the security deposit and that she entered proof of this loan in evidence. The Ministry document entered into evidence states that the tenant was provided with \$600.00.

Both parties agree that on September 4, 2020 the landlord verbally asked the tenant to move out in two months. Both parties agree that on November 3, 2020 the tenant verbally informed the landlord that she would move out on December 1, 2020.

The tenant is seeking the following damages from this tenancy:

Item	Amount
Security deposit	\$625.00
Illegal eviction	\$5,000.00
Damage to property	\$800.00
Mental anguish	\$2,000.00
Harassment	\$500.00
Schooling	\$680.00
Total	\$9,605.00

Security deposit

Both parties agree that the tenant has not provided the landlord with her forwarding address. The tenant is seeking the return of the security deposit.

Illegal eviction

The tenant testified that the eviction was not legal because the landlord did not provide the tenant with a written Notice to End Tenancy. The landlord and his agent testified that they did not provide the tenant with a written notice to end tenancy because she verbally agreed to move out, so they did not think they needed one.

The tenant testified that she is seeking \$5,000.00 for the illegal eviction. The tenant did not provide any testimony on how the sum of \$5,000.00 was arrived at.

Damage to property

The tenant testified that when she came to remove the last of her items from the subject rental property on December 1, 2020, she found that the landlord had thrown all of her remaining property in a pile. The tenant testified that many items were broken including:

- a television;
- a mini freezer;
- a coffee table; and
- lots of other stuff.

The tenant testified that she is claiming \$800.00 for damage to her property. The tenant did not enter into evidence any receipts, estimates or a breakdown of how the sum of \$800.00 was arrived at. The tenant entered into evidence photographs and a video of her items in a heap. It appears that several items are damaged.

The landlord and his agent testified that the tenant was supposed to remove her belongings by 1:00 p.m. on December 1, 2020 and that when that did not occur, the landlord and his agent removed the tenant's items and placed them outside the rental property. The landlord and his agent testified that they did not intentionally smash anything.

Mental anguish and harassment

The tenant testified that she felt that she had no choice but to move out of the subject rental property because the landlord harassed and threatened her. The tenant testified that the landlord threatened to call the Ministry and tell them that she was a drug addict and constantly harassed her about rent payments. The tenant testified that the landlord swore at her.

The landlord and his agent testified that they never threatened to call the Ministry and did not harass her about rent but did ask her to pay her rent on time. The parties entered into evidence a text message exchange in which the landlord asks the tenant for rent on the evening of November 1, 2020 and the tenant tells the landlord that she has until midnight and asks the landlord not to “come over bitching like u do with others”.

The tenant testified that the stress from the landlord’s harassment and eviction made her physically ill and unable to get up and see a doctor.

The tenant entered into evidence an unsigned letter purportedly from a friend of the tenant which states that after the landlord decided to evict the tenant, the stress made the tenant sick.

The tenant testified that she is seeking \$2,000.00 for mental anguish. The tenant was not able to tell me how she arrived at the sum of \$2,000.00.

The tenant testified that she is seeking \$500.00 for harassment. The tenant was not able to tell me how she arrived at the sum of \$500.00.

Schooling

The tenant testified that due to the ongoing harassment and the stress of the illegal eviction the tenant was not able to complete the schooling she signed up and paid for. The tenant testified that she is seeking \$680.00 for money she paid for school that she could not complete. No receipts were entered into evidence. The tenant entered into evidence a letter confirming her enrollment in school.

Analysis

Security deposit

I find that the security deposit was \$600.00 as confirmed by the Ministry document.

Section 38 of the *Act* states:

38 (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,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24
- (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36
- (2) *[landlord failure to meet end of tenancy condition report requirements]*.
- (6) If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.
- (7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.
- (8) For the purposes of subsection (1) (c), the landlord must repay a deposit
- (a) in the same way as a document may be served under section 88 (c),
 - (d) or (f) *[service of documents]*,
 - (b) by giving the deposit personally to the tenant, or
 - (c) by using any form of electronic
 - (i) payment to the tenant, or
 - (ii) transfer of funds to the tenant.

Both parties agreed that the tenant has not provided the landlord with her forwarding address. Pursuant to section 38 of the *Act*, the landlord is not yet required to return the tenant's security deposit. I therefore dismiss the tenant's claim for the return of the security deposit, with leave to reapply. The tenant must serve the landlord, in accordance with section 88 of the *Act*, with the tenant's forwarding address in writing if the tenant wishes to pursue this claim in the future.

Illegal eviction, mental anguish, harassment and schooling

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director

may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The testimony of the parties on the contents of verbal discussions between them is divergent. I find that the tenant has not proved, on a balance of probabilities, that the landlord or the landlord's agent threatened or harassed the tenants or forced them to vacate. The tenant had recourse if she did not want to vacate in accordance with the landlord's verbal request, the tenant could have filed a dispute with the residential tenancy branch.

I find that asking for rent on the day it is due is not harassment causing mental anguish. Based on the testimony of both parties, I find that the tenant voluntarily vacated the subject rental property. I find that an eviction is not illegal if it is agreed on by both parties.

I find that the tenant has not proved, on a balance of probabilities, that the landlord's behaviour prevented the tenant from completing her schooling.

Pursuant to my above findings, I dismiss the tenant's claims for compensation for an illegal eviction, harassment, mental anguish and schooling.

In addition, I find that the tenant has failed to prove the value of the damage or loss allegedly suffered for the above claims, as no receipts or explanations of the sums requested were provided. This is a failure to prove point three outlined above. On this ground, the tenant's claim is also dismissed.

Damage to property

The Residential Tenancy Act Regulation states at section 30:

Landlord's duty of care

30 When dealing with a tenant's personal property under this Part, a landlord must exercise reasonable care and caution required by the nature of the property and the circumstances to ensure that the property does not deteriorate and is not damaged, lost or stolen as a result of an inappropriate method of removal or an unsuitable place of storage.

Based on the tenant's testimony and the video and photographs entered into evidence, I find that the landlord and his agent did not gently place the tenant's belongings beside the subject rental property but threw them into a pile. I find that a number of the items thrown into the pile were damaged. I find that the landlord breached the landlord's duty of care as set out above. I find that the landlord was not entitled to damage the tenant's items that were left in the subject rental property past 1 p.m. on the date of move out.

I find that the tenant has proven a loss but has failed to establish the value of the damage as no receipts or estimates or breakdown of claim were provided by the tenant.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find that the tenant is entitled to nominal damages in the amount of \$400.00 for damage caused by the landlord to the tenants' personal property.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$400.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 25, 2021

Residential Tenancy Branch