



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

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

- a monetary award pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

Only the tenant K.K. (the "tenant") attended. The tenant was given a full opportunity to present sworn testimony, ask questions and describe his evidence.

The tenant provided sworn testimony that the application for dispute and evidentiary package were sent to the landlord by way of Canada Post registered mail on October 21, 2020. A copy of the Canada Post registered mail receipt was provided in evidence. The landlord is deemed to have been served with both the application for dispute and evidentiary package pursuant to sections 88, 89 & 90 of the *Act* on October 26, 2020, five days after their posting.

Issue(s) to be Decided

Is the tenant entitled to monetary award? Can the tenant recover the filing fee?

Background and Evidence

The tenant explained that he signed a tenancy agreement which was set to take effect on September 15, 2020. Due to some issue in the unit related to mould and repairs, the start date for the tenancy was moved to October 15, 2020. The tenant highlighted a discrepancy between the advertised monthly rental rate of \$1,200.00, an addendum which listed rent at \$1,250.00 per month and the tenancy agreement which listed rent at \$1,100.00 per month. A security deposit of \$550.00 was collected at the outset of the tenancy. This amount was returned in its entirety to the tenant at the conclusion of the tenancy.

The tenant was informed by the landlord on October 13, 2020 that he could not take possession of the rental unit. The tenant testified that he stored his belongings in a

bedroom at the rental unit for a fee of \$300.00 during the first weeks of October 2020 as he anticipated moving into the property. This fee, along with the security deposit were returned to the tenant when the landlord informed him that he could not occupy the suite.

The tenant is seeking a monetary award of \$7,000.00 plus a return of the \$100.00 filing fee. The tenant did not provide a monetary order worksheet but explained the figure represented a bursary of \$5,000.00 that he did not receive, along with the emotional stress and hardship associated with being denied access to a home when the landlord reneged on their tenancy agreement.

The tenant provided undisputed testimony in which he described the circumstances that led to the landlord's decision to deny him access to the suite after the signing of a tenancy agreement. The tenant suspected that a series of disputes between himself and the landlord prior to his move-in had caused the landlord to change her mind about renting the suite. The tenant doubted the landlord's assertions that the suite could not be occupied due to a presence of mould in the unit and because of a need for remediation of said mould. The tenant questioned the landlord's motivation as to why she could not fulfil her obligations under their tenancy agreement.

The tenant said the landlord's decision to renege on their agreement caused him great strife, complicated an ongoing personal legal matter and led him to receive poor grades at his post-secondary institution, thereby denying him access to a \$5,000.00 bursary.

Analysis

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. As described in *Policy Guideline #16*, in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove his entitlement to a claim for a monetary award.

While I accept the tenant's testimony that he suffered great emotional distress as a result of being rendered homeless due to the landlord's last-minute change of heart, I find no basis under the *Act* to award the tenant any amount of his claim associated with a missed bursary or for the emotional stress. I find the nexus between the losses

claimed and the landlord's actions to be outside the scope of the *Act* as described above by Policy Guideline #16.

Despite this finding, I note the landlord failed to exercise her contractual duties associated with the tenancy agreement signed by the parties. *Section 7(1)* notes, "If a landlord does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord must compensate the other for damage or loss that results." I find an award under this section of the *Act* is reasonable considering the inconvenience experienced by the tenant and because of his agreement to a later move-in date. The tenant put his life on hold for one month, took steps to move his belonging into the home, only to be told their contract would not be honoured. For this I award the tenant compensation equal to one month's rent. As noted above, there are several inconsistencies related to the amount which was to be charged for monthly rent. I find an award of \$1,250.00 to be consistent with anticipated rent and grant this amount to the tenant.

As the tenant was partially successful in his application, he may recover the \$100.00 filing fee.

Conclusion

I grant the tenant a Monetary Order of \$1,350.00. This amount includes a return of the filing fee.

The tenant is provided with a Monetary 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: February 02, 2021

Residential Tenancy Branch