



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

The tenant filed their Application for Dispute Resolution (the “Application”) on November 12, 2020. They seek compensation for monetary loss or other money owed, as well as reimbursement of the Application filing fee. The matter proceeded by hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 4, 2021.

Both the tenant and the landlord attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matter

At the beginning of the hearing, the landlord confirmed they received the tenant's documents that the tenant prepared in advance. This arrived at the landlord's address that is listed as their place of business.

The landlord presented how they attempted to deliver their prepared evidence in person to the tenant at the tenant's place of business. They described their actual attempts and made their conclusion that it was “an avoidance of accepting service.” They made sure of the tenant's presence at this workplace, then followed them into that place, where they allege the tenant ducked and avoided service. A relative of the tenant was present, yet the landlord concluded they could not serve their prepared evidence to this person.

Despite the landlord's difficulties with service of their evidence to the tenant, I advised the parties in the hearing that the matter was proceeding. The *Residential Tenancy*

Branch Rules of Procedure sets out the rule for the respondent's evidence. By Rule 3.15, they must ensure their evidence is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. This is not less than seven days before the hearing. I advised the parties at the outset of the hearing that individual pieces of evidence that the landlord relies upon as proof of their testimony may or may not be considered depending on the scenario and the way they rely on it. On any relevant piece, I would decide whether the tenant needed opportunity to review that specific piece. This is an application of Rule 3.17.

Despite the landlord's difficulties with service of their evidence to the tenant, I advised the parties in the hearing that the matter was proceeding, and I would evaluate individual pieces of evidence in like manner.

Also, on service, the landlord questioned why their own business address was appropriate for the tenant serving documents, yet they were not permitted to use registered mail to serve their documents to the tenant at their place of business.

The *Act* s. 88 is clear on this distinct issue. It fixes the service method as one of the following ways which are relevant to the scenario the parties present here:

- (a) by leaving a copy with the person;
...
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant. . .

In short, the *Act* allows for service to a landlord's business address; however, it only permits service to a tenant's forwarding residential address. Based on this, I am satisfied the tenant served their materials to the landlord in a manner prescribed by the *Act*.

Issue(s) to be Decided

Is the tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the tenant entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The tenant provided a copy of the tenancy agreement that both parties signed on May 16, 2020. The tenancy started on that day, set for a fixed term to expire on May 31, 2021. The agreement shows the rent amount of \$2,100 per month on the first of each month. The tenant paid a security deposit for \$1,050 and no pet damage deposit.

The tenancy ended on September 30 when the tenant moved out. The tenant submitted a copy of the 10-Day Notice to End Tenancy for Unpaid Rent which the landlord issued on September 2, 2020. According to the tenant, this involved a friend having to assist with their move out when the landlord placed their belongings outside from the rental unit on that day. They deemed this to be an “emergency move”. Next, the tenant then took up residence with a contact on September 30. They have remained with this contact since that time.

Approximately mid-July, there was the need for renovations in this rental unit. This required the tenant’s temporary move-out. According to the tenant, the landlord put them in a motel room at that time; however, the room was not suitable for reasons of cleanliness, especially when the tenant required a kitchen facility. The tenant is presenting that within days the landlord agreed to pay for the tenant’s alternate accommodation, at the rate of \$100 per day. In the hearing, the tenant read from a message on their phone (not submitted as evidence) from July 22. This message was the landlord’s agreement to pay \$100 per day for the tenant’s accommodation elsewhere.

The landlord strictly denies this. Instead they referred to the tenant not having proper tenant’s insurance which was a requirement within the addendum of the tenancy agreement. Their arrangement was for \$50 per day for food only, and then this amount would come out of the tenant’s insurance once acquired. The landlord stated their messaging provided in evidence shows this explicitly.

The tenant’s claim is set out in their Monetary Order Worksheet completed on November 12, 2020. This was disclosed to the landlord in proper fashion, supplemented with receipts for pieces of their claim. I have categorized each part of their claim here:

(a) room and board while renovations were ongoing = \$7,400

This is based on the tenant's claim that the landlord agreed to pay the tenant's friend money for keeping the tenant at their home. This is \$100 per day. The tenant stated they proposed this arrangement and the landlord agreed. In the hearing the tenant stated they submitted the text messages they had with the landlord that shows the landlord's agreement to this.

Breaking this down, it is \$1,200 for the remainder of July, and \$3,100 for each of August and September. There are receipts from the tenant's friend which purportedly show these amounts on the last day of each month, each signed by the tenant's friend.

As above, the landlord denies this arrangement was in place. They stated these were phony receipts, and do not reflect actual payment amounts.

(b) assistance on move out day = \$300

The tenant presented a receipt from another person. This bears the notation "emergency move out (stuff was put outside)". This individual helped the tenant with picking up personal belongings from outside the rental unit, then moving these to the tenant's new accommodation. The landlord questioned this amount as well – not actually reflective of any amount spent by the tenant.

(c) new rental and security deposit = \$1,975

This is the first month rent \$1,850 and security deposit \$925 at the tenant's new rental unit. They moved into this unit on September 30, 2020.

(d) return of security deposit = \$1,050

This is the original amount of the security deposit that the tenant paid at the start of their tenancy with the landlord here. The landlord previously made a claim for damages and in that hearing applied to offset the security deposit against damages. That hearing resulted in the landlord having leave to reapply on their claim.

On the Condition Inspection Report provided by the tenant, the notation written by the landlord shows that the tenant did not give a forwarding address. Moreover, the tenant

did not sign to show they agree to the landlord keeping the security deposit to apply against any assessed amount of damages.

(e) Application filing fee = \$100

The tenant paid this fee when making their Application on November 12, 2020.

Analysis

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss 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.

I focus this analysis on each portion of the tenant's claim as they are set out above. The amount of reward is set in each subheading below:

(a) room and board while renovations were ongoing = \$0

I am not satisfied that a loss to the tenant exists for this portion of their claim. The evidence does not show the tenant was out-of-pocket and actually made payments to their friend for accommodation during this time. This is in contrast to a situation where

the tenant was forced to pay for accommodation and then is recouping costs already incurred.

Also, there is no evidence the tenant was paying monthly rent to the landlord during the time of renovations. There is no loss to the tenant in that regard.

Further, I am not satisfied there was an arrangement in place with the landlord for this amount. The landlord stressed the need for tenant's insurance, and I follow their logic that the necessity for that insurance is in place precisely for these kinds of situations. Given that the landlord stressed that insurance is mandatory when a tenancy starts – and this is set out clearly in the addendum to the tenancy agreement – I find it more likely than not they would necessarily rely on this insurance for any costs incurred. The landlord was clear in the hearing that insurance is in place for this reason – I find it more plausible that the landlord would maintain that approach when dealing with the tenant's own expenses along the way.

I am not convinced the receipt provided reflects an actual amount paid; rather, I find the tenant here is using these receipts to show how each month of cost for their claim breaks down. This is not evidence of actual amounts paid and these are not "receipts".

The tenant's statements in the hearing of a direct text message from the landlord does not outweigh the landlord's testimony of the important need for insurance. The tenant did not provide their text message in the evidence. I find there was no agreement of this kind in place.

Finally, the tenant has not shown that a monetary loss for this portion results from any violation of the *Act* or the tenancy agreement by the landlord. There is no evidence of a verbal agreement for expenses in place, either implied or explicit in writing.

For these reasons, this portion of the tenant's claim for \$7,400 is dismissed.

(b) assistance on move out day = \$0

The tenant presented a receipt from another person. This bears the notation "emergency move out (stuff was put outside)". This individual helped the tenant with picking up personal belongings from outside the rental unit, then moving these to the tenant's new accommodation. The landlord questioned this amount as well – not actually reflective of any amount spent by the tenant.

The tenant has not established the value of the loss to them here. Again, I find this is not a receipt for cash outlay by the tenant. Moreover, the breakdown of costs that would justify this \$300 amount was not provided by the tenant. This claim is dismissed.

(c) new rental and security deposit = \$0

The tenant moved out from the rental unit here on September 30, 2020. At that point, the relation between the landlord and the tenant ceased. The tenant here has not shown with reference to the legislation or the tenancy agreement why the landlord should pay for their new living arrangement. The tenant has not shown that the tenancy was a forced ending. Moreover, I find the legal requirements for the landlord to end the tenancy were in place. There was no violation of the legislation or the tenancy agreement by the landlord here. This portion of the tenant's claim is dismissed.

(d) return of security deposit = \$0

To govern the security deposit, the *Act* s. 38(1) requires that a landlord must repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later.

Here, there is no evidence to show the tenant provided their forwarding address to the landlord in writing. It is the tenant's responsibility to do so in accordance with s. 38(1) of the *Act*. The *Act* s. 88 gives seven alternate ways of serving documents that are required to be given or served to another person. The tenant's forwarding address in writing is one such document.

Because there is no record of the tenant providing their address to the landlord as the *Act* requires, there is no return of the security deposit by the landlord here.

The *Act* s. 39 provides that it is the tenant's obligation to provide a forwarding address for return of the security deposit within a year of the end of the tenancy. If that does not occur, the landlord may keep the security deposit and the tenant's right to the deposit return is extinguished.

For this reason, this portion of the tenant's claim is dismissed.

(e) Application filing fee = \$0

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the tenant was not successful here, I find they are not entitled to recover the filing fee from the landlord.

Conclusion

For the reasons above, I dismiss the tenant's Application in its entirety and 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 *Act*.

Dated: March 5, 2021

Residential Tenancy Branch