



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to return the security deposit, pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

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

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the materials in accordance with sections 88 and 89 of the Act.

At the outset of the hearing both parties expressly affirmed they understand it is prohibited to record this hearing and that when one person is speaking, the other can not interrupt.

Preliminary Issue – Security deposit

Both parties agreed there was a Residential Tenancy Branch decision dealing with the security deposit.

As the return of the security deposit was already decided I decline to hear the application for an order for the landlord to return the security deposit.

Issues to be Decided

Is the tenant entitled to:

1. a monetary order for compensation for damage or loss?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate his application.

Both parties agreed the tenancy started on August 01, 2019 and ended on September 30, 2020. Monthly rent was \$1,750.00, due on the first day of the month. A copy of the tenancy agreement was submitted into evidence.

The tenant stated around mid-October 2019 the rental unit's dishwasher broke and he immediately verbally informed the landlord. The landlord affirmed he only became aware the dishwasher was not working on October 27, 2019. On November 03, 2019 the tenant emailed the landlord:

TENANT: Please notice that it's more than 3 weeks that I have informed you about the leakage of dishwasher but unfortunately no sign of commitment to responsibility have been seen from your side! Please do some action as soon as possible.

LANDLORD: As our conversation over the phone last week, i purchased a Dishwasher for your place but the problem was your timing as you said you are available on Fridays and my plumber wouldn't be able.

So we need to reschedule for the first your availabilities and my plumber.

That would be a full day job to install the dishwasher where there is no existing dishwasher. The one that you have is portable one. **Please let me know your timing then i will talk to my plumber.** Thanks

TENANT: As you have mentioned, you called me last week, after two weeks that I informed you about the dishwasher's leakage! In addition to that, you also mentioned that you had been informed about my availability on fridays, so it was expected to see any action to solve the issue during 3 weeks and I'm still waiting to hear from you.

(emphasis added)

Both parties agreed the dishwasher was replaced on November 15, 2019. The landlord stated the old dishwasher was still running when it was replaced and the tenant was

always able to manually wash dishes. The landlord affirmed the new dishwasher was purchased on November 03, 2019 and it was only installed on November 15, 2019 because the tenant was not available to receive the plumber before that date, the rental building does not allow the required plumbing service during the weekend and the delivery must be booked in advance. The tenant said the dishwasher did not require a plumber to be installed.

The tenant is claiming for compensation in the amount of \$500.00 for not having a functional dishwasher for “35 to 40 days”.

The tenant is claiming for compensation in the amount of \$100.00 per month during the 13-month tenancy because both dishwashers are portable. The tenant noticed the first dishwasher is portable one week after he moved in but he decided not ask the landlord to replace it with a non-portable dishwasher. The tenant submitted this application after he was served the landlord’s application for a monetary order.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7 (1) 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.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;

- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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.

Based on the landlord's more precise and convincing testimony and the landlord's email dated November 03, 2019, I find the tenant informed the landlord about the non-functional dishwasher on October 27, 2019, on November 03, 2019 a replacement dishwasher was purchased and it was only installed on November 15, 2019 because the tenant was not available to receive the plumber before that date. I further find the landlord provided a reasonable response, acted quickly to replace the dishwasher and a non-functional dishwasher for one week does not reduce the value of a tenancy.

The tenant did not prove, on a balance of probabilities, the landlord failed to comply with the Act, the regulation or the tenancy agreement. Thus, the tenant is not entitled to compensation for not having a functional dishwasher from October 27 to November 03, 2019.

Residential Tenancy Branch Policy Guideline 05 explains the duty of the party claiming compensation to mitigate their loss:

B. REASONABLE EFFORTS TO MINIMIZE LOSSES

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;
- promptly report the damage and leak to the landlord and request repairs to avoid further damage;
- file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

Partial mitigation

Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.

The tenant did not mitigate his losses by not asking the landlord to replace the portable dishwasher with a non-portable dishwasher during the tenancy. As such, the tenant is not entitled to the compensation claimed.

The tenant must bear the cost of his filing fee, as he was not successful in his application.

Conclusion

I dismiss the tenant's application 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 *Residential Tenancy Act*.

Dated: March 25, 2021

Residential Tenancy Branch