



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the "Act") for a monetary award for damages and loss.

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

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The monthly rent for this periodic tenancy was \$950.00. This tenancy ended on March 31, 2019 in accordance with a mutual

agreement entered by the parties. A term of the agreement was that the landlord would pay the tenants the amount of \$1,812.50 on March 31, 2019 when the tenants were vacating the rental unit. A copy of the agreement was submitted into evidence and the parties both testified and confirmed the details of the agreement they entered.

The parties agree that the landlord did not pay the tenants the amount of \$1,812.50 on March 31, 2019 as was required under the agreement. The landlord submits that they did not get along personally with the tenant and chose not to make the payment as required. The landlord did not make any payment during the subsequent 2 years and have only recently issued a cheque in the amount of \$1,812.50 in August 2021. The tenants confirmed receipt of the cheque though they have not yet deposited it.

The tenants submit that the amount of \$1,812.50 was necessary when the tenancy was ending to secure new accommodations. The tenants testified that as a result of the landlord failing to make the payment as agreed, they were unable to find accommodations, experienced homelessness and hardships and suffered physical, emotional and economic damage. The tenants now seek a monetary award in the amount of \$11,400.00, the equivalent of 12 times the monthly rent paid under the tenancy agreement.

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. 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.

The parties provided testimony that there was an agreement between them for the landlord to pay the amount of \$1,812.50 on March 31, 2019 when the tenants were vacating the rental unit. The parties agree that the landlord did not issue payment as required at that time. I do not find the landlord's explanation that they chose not to make payment as agreed because they personally dislike the tenant to be a reasonable excuse for breaching the agreement. The landlord has now issued payment 2 years and 4 months after they were required to do so under the agreement.

The tenants have testified that while they have received the landlord's cheque they have not yet deposited the funds and are uncertain, based on the past history with the landlord, if the cheque will be honored.

The tenants gave evidence that as a result of the breach of the agreement by the landlord they have incurred significant damages and loss including experiencing homelessness, losing possessions, and suffering physical, emotional and mental damages. While the tenants did not submit documentary evidence in support of their claim, they provided cogent, reasonable testimony detailing the impact that the landlord's failure to abide by the terms of their agreement have caused them over the previous several years.

Based on the undisputed testimony of the parties I accept that there was an agreement requiring the landlord to pay the amount of \$1,812.50 on March 31, 2019. I accept the undisputed evidence that the landlord chose not to pay the amount as required and ignored their obligation until August 2021. I accept the evidence of the tenants that as a result of the landlord's breach they incurred significant losses for which they claim the amount of \$11,400.00.

I am satisfied based on the testimony of the parties that this is an appropriate amount for a monetary award arising from the landlord's breach. I find it reasonable that the failure of the landlord to provide payment on the date agreed would result in the tenants being unable to secure new accommodations. I accept that being unhoused or precariously housed has significant detrimental effects on an individual's physical, mental and emotional health. I further accept that the tenants lost significant personal possessions as a result of the landlord's failure to provide payment at the time required. I find that the losses incurred by the tenants are a reasonably foreseeable and inevitable consequence of the landlord's highhanded and deliberate failure to provide payment as agreed.

Based on the foregoing I issue the tenants a monetary award in the amount of \$13,212.50 as claimed. I understand that the landlord has issued a cheque for the amount of \$1,812.50 and the monetary award will be reduced by that amount should the tenants be able to deposit those funds.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$13,212.50. 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: August 30, 2021

Residential Tenancy Branch