



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

The tenant seeks compensation pursuant to section 67 of the *Residential Tenancy Act* ("Act"), including recovery of the filing fee under section 72 of the Act.

The hearing first occurred on May 14, 2021. This was adjourned to September 16, 2021 for the sole purpose of having the parties serve evidence in compliance with the Act. The parties confirmed receipt of each side's evidence, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained. It should be noted for the record that one of the callers' line had to be muted for a duration of approximately ten minutes due to unavoidable background noise coming from that caller's line.

Issue

Is the tenant entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began on July 1, 2020 and ended around the beginning of March 2021. There is no written tenancy agreement, but monthly rent was \$1,300.00 and the tenant paid a security deposit of \$700.00. The security deposit has not been returned, though I note that the landlords were ordered and authorized in a previous arbitration decision to retain the tenant's security deposit.

The tenant seeks compensation for the following:

1. Filing fee of \$100.00
2. Rent subsidy return of \$300.00
3. Insurance money from landlords' insurance for tenant's discomfort for \$600.00
4. Cost of cleaning rental unit in the amount of \$200.00
5. Cost of furniture removal in the amount of \$59.53
6. Cost of furniture storage in the amount of \$306.21
7. Cost of a carbon monoxide detector in the amount of \$45.77
8. Loss of wages for moving furniture and other matters in the amount of \$800.00
9. Refund of all rent paid in the amount of \$3,900.00

I will address each of the above-noted claims below.

The tenant testified that they were awarded the filing fee in a previous hearing. That is the amount that they seek in this hearing. (This may, in fact, be an error, given that the tenant paid the \$100.00 application filing fee in respect of this present application.)

The tenant testified that BC Housing has a judgment against her in the amount of \$300.00. According to the tenant, the landlords were supposed to return to her or BC Housing that subsidy but failed to do so.

The tenant testified that when the rental unit flooded, the landlords brought in plumbers and the landlords allegedly admitted that they knew about the broken pipe and should have fixed it earlier. The landlords advised the tenant that their insurance company had made a payout of \$600.00 to the landlords, and that it was their intention to pay the tenant this money as compensation for her discomfort. However, they never paid the tenant this money.

The tenant testified that after the contractor was finished repairing the rental unit, she was required to do all the cleanup. At first the landlords told her that they would do the cleanup but later changed their mind. It is the tenant's claim that this cleanup took ten hours at a cost of \$20.00 for a total of \$200.00.

The tenant testified that during the repair construction work she was forced to put much of her property and furniture into storage. This cost her \$306.21. Again, the tenant argued that because the flood was caused through no fault of her own that the landlords ought to pay for this storage cost.

The tenant testified that she purchased a carbon monoxide detector because shortly after moving back into the rental unit she smelled something funny. She was really sick as a result of this smell. The landlords refused to purchase a carbon monoxide detector.

The tenant testified that as a result of the carbon monoxide poisoning, moving furniture, and so forth, she “lost a *lot* of work.” This is the basis for her claim for lost wages in the amount of \$800.00.

Last, the tenant testified that a city inspection determined the rental unit to be “uninhabitable” and that it ought to never have been rented in the first place. Thus, the tenant seeks the return of \$3,900.00 in rent that she paid.

The tenant said, “I’m not a bad person, I’m a good person [and] I was treated horribly.”

The landlord’s property manager provided most of the testimony for the landlords. She testified that the restoration documentation from Balfour proves that the flood was an emergency situation and was unexpected. In other words, contrary to the tenant’s position, the landlords did not have prior knowledge of the broken pipe or pipes.

In respect of the insurance payout of \$600.00, the manager commented that “I don’t know who said what.” Nevertheless, she explained that any insurance payout would have been made to the landlords, and not to the tenant.

The manager then testified that the tenant was given living accommodation – in the form of a 26-foot-long RV – for a period of three to four months. “Rent free,” she added.

Regarding the cleaning costs, the landlords offered to come in and clean up after the contractor, but the tenant apparently refused entry. The landlords were thus unable to take care of any cleanup. As for the tenant’s claim for furniture moving and storage costs, the manager submitted that the tenant should have had tenant’s insurance in place. And, that the landlords therefore ought not be liable for this claim.

In respect of the claim for the carbon monoxide detector, the manager testified that the landlords were diligent and acted immediately to this matter. Last, the manager remarked that there was no written tenancy agreement in place, and, that the landlords do not owe the tenant any refund in rent. Indeed, she added that the tenant in fact owes the landlords unpaid rent, and which was awarded in a previous hearing.

One of the landlords briefly testified, referring to the tenant's testimony as "a lot of lies." A small amount of testimony was then provided, though I found it rather difficult to understand what the landlord was attempting to convey.

After the landlord finished testifying her husband stated that he agreed with everything his wife had said. He added that it was a "very tense and uncomfortable year" and that they were "taken in by a couple of con artists and paid the price."

Analysis

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

1. Rent Subsidy Return (\$300.00)

The tenant seeks \$300.00 as a refund or return of a rent subsidy that was paid in November 2020. The basis for this claim is unclear. If the landlords somehow collected monies for rent that ought not to have been paid then there is no evidence of this. Further, there is in the tenant's documentary evidence no evidence that there is any claim or judgment against her from BC Housing. The landlords dispute this claim.

In taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving this claim.

2. Insurance Money for Tenant's Discomfort (\$600.00)

According to the tenant the landlords offered to give her \$600.00 which was apparently given to them by their insurance company. This was to compensate the tenant for her discomfort. The landlords deny that any such agreement or arrangement was made.

There is no persuasive evidence before me to find that the landlords were ever in agreement to pay her \$600.00. As such, I do not find that the tenant has discharged the onus of proving this claim.

3. Cost of Cleaning Rental Unit (\$200.00)

In respect of this claim, even if the landlords had breached the Act, the regulations, or the tenancy agreement, there is no supporting evidence to establish that the tenant actually spent this amount of time (ten hours) cleaning the rental unit. No verifiable third-party evidence and no log of any sort recording the time expended on cleaning. Without supporting evidence of such time spent I cannot consider this claim. The tenant has not established this claim on a balance of probabilities, and it must be dismissed.

4. Cost of Furniture Removal and Storage (\$365.74)

It is worth noting that the landlords did not dispute this claim per se. Rather, their property manager merely stated that the tenant should have had tenant's insurance.

Section 28 of the Act states that a tenant is entitled to exclusive possession of the rental unit. Based on the facts before me, the tenant was required to remove and store her furniture and belongings as a result of flood repair work being undertaken. As such, it cannot be said that a tenant has exclusive possession of a rental unit when they have to remove their furniture and belongings.

The tenant did not, it appears, have tenant insurance. However, the tenancy agreement (verbal as it was) did not appear to have any requirement that the tenant have such a policy.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving their claim for these two matters in the amount of \$365.74.

5. Cost of Carbon Monoxide Detector (\$45.77)

Regarding this claim, the tenant purchased a detector of her own volition. There did not appear to be any such detector in the rental unit at the start of the tenancy. And, while the tenant certainly had a reason to be concerned as to potential carbon monoxide poisoning, it is the tenant who chose to purchase the detector. Such a cost is not a result of any obligation on the part of the landlords. Thus, I find that the tenant has not proven this claim.

6. Loss of Wages (\$800.00)

As is the case with the cleaning claim, above, there is no supporting evidence (such as a work or shift schedule, a paycheque, or a pay stub, for example) proving that the tenant in fact lost this amount in wages. Without such evidence I cannot consider a claim for lost wages. Accordingly, this aspect of the tenant's claim is dismissed.

7. Return of Rent (\$3,900.00)

The tenant seeks the return of \$3,900.00 in rent based on the fact that the municipality eventually declared the rental unit to be uninhabitable.

However, the tenant did, in fact, inhabit the rental unit for a period of time. At its most basic, a tenancy is nothing more than a contract wherein one party pays another party rent money in exchange for a property in which they occupy. This is what occurred. And, that the municipality may have deemed the rental unit uninhabitable does not, I find, invalidate the contract such a manner that the tenant is somehow entitled to a return of any rent paid.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving their claim for the return of any rent.

8. Filing Fee (\$100.00)

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant.

As the tenant only partly succeeded in her application, I grant her \$50.00 in compensation to partly cover the cost of the filing fee.

Conclusion

The tenant's application is granted in part, as explained above, and she is awarded a total of \$415.74. The remainder of the tenant's application is dismissed without leave to reapply.

A monetary order in the amount of \$415.74 is granted to the tenant, who must serve a copy of this order on the landlords.

This decision is final and binding and is made on delegated authority under section 9.1(1) of the Act.

Dated: September 17, 2021

Residential Tenancy Branch