



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on April 24, 2021 (the “Application”). The Tenant applies as follows:

- For compensation for monetary loss or other money owed
- To recover the filing fee

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant who did not have questions when asked. I told the Tenant they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant’s evidence.

The Tenant testified that the hearing package and evidence were sent to the Landlord by registered mail May 07, 2021. The Tenant testified that they sent the package to the Landlord’s address for service noted on the written tenancy agreement in evidence.

The Tenant submitted a registered mail receipt with Tracking Number 777 on it. I looked Tracking Number 777 up on the Canada Post website which shows the package was delivered to a “community mailbox, parcel locker or apt./condo mailbox” on May 11, 2021. I asked the Tenant if they requested a signature when they sent the registered mail and the Tenant could not remember. The delivery confirmation on the Canada Post website states “Signature unavailable or not requested.” (emphasis added) in relation to “Signatory Name”.

Based on the undisputed testimony of the Tenant, registered mail receipt and Canada Post website information, I am satisfied the Landlord was served with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “*Act*”). Although there is no “Signatory Name” shown on the delivery confirmation on the Canada Post website, there is nothing on the registered mail receipt or Canada Post website stating that the Tenant did not request a signature and therefore I am satisfied the Tenant complied with the service requirements of the *Act*. Based on the Canada Post website information, I find the Landlord received the package May 11, 2021. I also find based on the evidence referred to that the Tenant complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the Tenant and all documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started September 01, 2019 and was for a fixed term ending August 31, 2020. The tenancy then became a month-to-month tenancy. Rent was \$1,350.00 per month. The Tenant confirmed rent was due on the first day of each month. The Tenant paid a \$675.00 security deposit.

The Tenant testified that the tenancy ended September 29, 2020.

The Tenant seeks \$500.00 in overpaid rent.

The Tenant testified as follows. They had paid all rent and there was no rent outstanding at the end of the tenancy. During the tenancy, they had received a rent supplement from a third party. They understood from the third party that \$250.00 had

been paid to the Landlord. When they received their tax documents, they learned that the third party had paid \$750.00 to the Landlord, three installments of \$250.00. They were not aware of this prior to receiving the tax documents because of their discussions with the third party and because the third party paid the Landlord directly. Given the third party paid \$750.00 and not \$250.00 to the Landlord, \$500.00 of rent was overpaid.

The Tenant explained their documentary evidence which includes a table of all financial transactions between the Tenant and Landlord showing that only one payment of \$250.00 from the third party was accounted for. The documentary evidence also includes documentation of three payments of \$250.00 each being made by the third party to the Landlord for a total of \$750.00.

The Tenant also submitted the following:

- All Payments Issued for [Landlord]
- Notice from the Tenant to the Landlord ending the tenancy

Analysis

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

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

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I accept the undisputed testimony of the Tenant and based on it, as well as the documentary evidence submitted, I am satisfied of the following. The Tenant overpaid the Landlord \$500.00 in rent. The Landlord failed to comply with the tenancy agreement by collecting more rent than the amount due pursuant to the tenancy agreement. The Tenant suffered loss of \$500.00 due to the Landlord collecting more rent than the amount due pursuant to the tenancy agreement. I find the Landlord must return the \$500.00 rent overpayment to the Tenant.

Given the Tenant was successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is owed \$600.00 and I issue the Tenant a Monetary Order in this amount pursuant to section 67 of the *Act*.

Conclusion

The Tenant is awarded \$600.00 and is issued a Monetary Order in this amount. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it

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 *Act*.

Dated: October 27, 2021

Residential Tenancy Branch