



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: OPC, FFL
For the Tenant: CNC, OLC, MNDCT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord filed claims for:

- An Order of Possession, based on having served the Tenant with a One Month Notice to End the Tenancy for Cause, dated June 29, 2021 ("One Month Notice"); and
- recovery of the \$100.00 Application filing fee.

The Tenant filed claims for:

- an Order cancelling the One Month Notice;
- an Order for the Landlord to Comply with the Act or tenancy agreement; and
- \$750.00 compensation for monetary loss or other money owed.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. At the start of the hearing, the Parties agreed that the Tenant had vacated the residential property on September 9, 2021. Accordingly, I find that the Parties' respective applications regarding the ongoing tenancy are no longer relevant. I, therefore, dismiss the Landlord's application for an order of possession based on the One Month Notice, and I dismiss the Tenant's application for an Order cancelling the One Month Notice. Accordingly, we are left with the Tenant's application for a monetary order and the Landlord's application to recover the \$100.00 application filing fee. I will decide the latter matter, based on the Parties' respective success in the proceeding.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

During the hearing, the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”). However, only the evidence relevant to the issues and findings in this matter are described in this Decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider the written or documentary evidence to which they pointed or directed me in the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties’ email addresses in the application and the Parties confirmed them in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recovery of the \$100.00 application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on April 21, 2021, with a monthly rent of \$1,550.00, due on the first day of each month. They agreed that the Tenant paid the Landlord a security deposit of \$750.00, and no pet damage deposit. The Landlord confirmed that she still holds the Tenant’s security deposit in full.

In her application, the Tenant said the following about what she seeks. She said:

I want compensation for monetary loss due to 3 full work days required to: -
research requirements to produce, and disseminate evidence for a hearing with the STRATA board to defend myself against false and fabricated bylaw allegation by a landlord who owns a Airbnb unit above me used solely for monetary gain at a Resort. The alleged bylaw breach is what my landlord used as evidence to try and evict me. She refused to respond to a voicemail wherein I expressed my concerns about the unit above and the noise before sending the eviction notice and refused to listen directly after receiving alleged strata bylaw infraction letter. -
research requirements required to produce evidence and apply for a dispute resolution hearing .

[reproduced as written]

However, in the hearing, the Tenant said that she seeks her security deposit back, less a pro-rated amount she says she owes the Landlord for September 2021. The Tenant said she was there for nine days and eight nights, as she moved out on September 9. The Tenant said the Landlord agreed that the Tenant may pay a reduced or pro-rated amount of rent for September, since she was there for nine days only. The Tenant also said that the Landlord moved into the rental unit the day after the Tenant moved out.

The Landlord said she did not agree to the Tenant paying a pro-rated amount in September. She said the discussion went as follows:

No, I did not. I did on the 1st, I said – there are several emails. So, the first between me and her. Can we do the walkthrough – then she did the prorated amount . . . As you have my damage deposit, . . . and return the remainder. . . Then I went back and said the damage deposit is for damages, not rent. I will meet you on the 9th . . . I also need access on . . . She went on, please answer my question.

The Tenant submitted a copy of the email she sent to the Landlord on September 1, 2021 (“Email”), suggesting that she pay pro-rated rent to the day on which she vacates the rental unit. The Tenant calculated that she owed the Landlord \$51.66 per day for eight days, which equals \$413.28.

In the Email, the Landlord responded by saying that the damage deposit is for damages, not rent, and that the Tenant needs to pay her rent pursuant to the month-to-month tenancy agreement.

In the hearing, the Landlord confirmed that she had not agreed to a pro-rated amount for rent for September 2021.

The Tenant submitted the following as a monetary order worksheet:

\$336.72 - New amount owed for portion of damage deposit not yet returned
\$300 – Approximately 20 hours spent on defending myself against a wrongful eviction which I needed to use for search for employment. This required reviewing countless emails, text messages, conversations and creating documents for my dispute resolution claim which I have had to amend after making the decision to move out.

\$636.72 – Total owing

The Tenant did not expand on her claim for \$300.00 from the Landlord for the 20 hours the Tenant said she spent defending herself “against a wrongful eviction”.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Before the Parties began testifying, I let them know how I would analyze the evidence presented to me. I told them that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenant must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenant to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenant did what was reasonable to minimize the damage or loss.

(“Test”)

The Tenant did not apply for the return of her security deposit in her application. Further, she did not provide an authority under the Act for her claim for pro-rated rent, nor for the Landlord to compensate the Tenant for her time spent responding to the Landlord’s eviction notice.

I find there is no persuasive evidence that the Landlord agreed to any of the Tenant’s claims, nor has the Tenant provided any authority under the Act, regulation, or tenancy agreement to support these claims.

Based on the evidence before me overall, I find that the Tenant has not provided sufficient evidence or authorities to support her claims. I, therefore, dismiss the Tenant’s application wholly pursuant to section 62 of the Act.

As the Tenant has already moved out, her other claims are dismissed without leave to reapply, as is the Landlord’s claim for an order of possession for cause.

However, I find it appropriate in the circumstances to award the Landlord with recovery of her \$100.00 Application filing fee. I grant the Landlord a monetary award of **\$100.00**

from the Tenant, pursuant to section 72 of the Act. I authorize the Landlord to retain \$100.00 of the Tenant's \$750.00 security deposit in complete satisfaction of this award.

As the Landlord did not apply to keep the security deposit, in lieu of not having received rent from the Tenant for September 2021, I must Order the Landlord to return the remaining security deposit to the Tenant, after deducting the \$100.00 award.

Pursuant to section 67, the Tenant is awarded a Monetary Order in this regard for **\$650.00** from the Landlord, representing the return of the complete security deposit remaining in the tenancy.

Conclusion

The Tenant moved out of the rental unit on September 9, 2021, and therefore, the Parties' respective claims regarding the status of the tenancy are dismissed without leave to reapply. The Tenant's other claims are dismissed without leave to reapply, as she provided insufficient evidence to support her burden of proof in this regard.

The Landlord is awarded recovery of her \$100.00 Application filing fee from the Tenant, pursuant to section 72 of the Act. The Landlord is authorized to retain this amount of the Tenant's security deposit in complete satisfaction of this award.

I grant the Tenant a Monetary Order of **\$650.00** from the Landlord, as the Landlord must return the remaining amount of the Tenant's \$750.00 security deposit, once the Landlord's monetary award is satisfied.

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: November 08, 2021

Residential Tenancy Branch