



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE, MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;

The tenant and the landlord, J.D. attended the hearing via conference call and provided affirmed testimony. The landlord, M.D. did not attend and was unrepresented.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenant served the landlords with the notice of hearing package in person. Both parties confirmed the tenant served the landlord with the submitted documentary evidence by posting it to the landlord's door on November 14, 2021. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence by posting it to the tenant's door on November 18, 2021. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both have been sufficiently served as per section 71 of the Act.

Preliminary Issue(s)

At the outset, the tenant's application and amendments were clarified. The tenant applied for an order for the landlord to comply; and a request for an order to suspend or set conditions on the landlord's right to enter. The tenant then filed an amendment to cancel a 1 month notice to end tenancy for cause and then subsequently another amendment for a monetary claim for compensation and return of the deposits. The tenant provided written details stating that she has since vacated the rental unit and no longer resides in the rental unit. The tenant stated that she now only seeks monetary compensation. The landlord confirmed that the tenant has vacated and confirmed that he was able to respond to the tenant's claim. As such, the tenant's requests were cancelled, except for the monetary claim.

I also note at the end of the hearing the tenant disconnected from the conference call hearing at 10:36 am prematurely. The landlord was asked to wait for the tenant to reconnect. After waiting until 10:45am, the conference call hearing was concluded with no further submissions by the landlord.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation and return of the security and pet damage deposits?

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks a monetary claim of \$3,300.00 which consists of:

\$2,200.00	Moving Expenses, Pain/suffering
\$550.00	Security Deposit
\$550.00	Pet Damage Deposit

The tenant provided affirmed testimony that as a result of the landlord's actions she suffered pain and suffering due to the landlord's abusive behaviour and threats. The tenant stated that the \$2,200.00 was an arbitrary sum equal to two months rent. The tenant stated that the landlord was abusive to her by reporting her home business to the local authorities; failed to address a garbage can issue regarding access; a breach of

privacy occurred when the landlord's spouse was seen looking into her window and taking a picture of the tenant while she was on her deck.

The landlord disputes the tenant's claim arguing that there has been no harassment or abusive behaviour. The landlord has referenced the text message communications between the two parties that the landlord has been polite and kind. The landlord stated that it was discovered that the tenant had a home based business and that the landlord learned through his insurance carrier that he was not covered for the rental due to the home business. The tenant was requested to provide a business license for the home business or a letter in writing stating that the tenant would no longer conduct a home business from the rental unit as per the submitted copy of a text message request on August 12, 2021 listed on the landlord's evidence submission. The landlord also referenced a hotel invoice/receipt that speaks to the tenant's claim on the date of when the landlord would have alleged to have been breaching the tenant's privacy. The landlord stated that he was not even home on the dates referenced by the tenant.

The tenant also seeks return of her \$550.00 security and \$550.00 pet damage deposits. The tenant stated that as of the date of this hearing the landlord has not returned either after the tenancy ended on November 1, 2021. The landlord confirmed that the tenant vacated the rental unit but stated that as of the date of this hearing the tenant has not provided her forwarding address to the landlord requesting the return of the security and pet damage deposits. The tenant confirmed the landlord's claim that she did not provide her forwarding address and requested the return of the security and pet damage deposits. The landlord also noted during the hearing that he has already filed an application to dispute returning the tenant's security and pet damage deposits to offset a claim for compensation.

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.

I accept the affirmed evidence of both parties and find on a balance of probabilities that the tenant has failed to establish a claim for \$2,200.00 in compensation. Despite the tenant's claims of harassment and abusive behaviour on the part of the landlord, the tenant has failed to present any evidence in support of this claim. The landlord in contrast has provided copies of text message exchanges regarding their communications. The text messages only show a polite and kind exchange. I also note regarding the tenant's claim of her breach of privacy, that the landlord referenced as hotel invoice/receipt which he claimed shows that he was not even in residence at the time of the tenant's claim of a breach. The tenant failed to present any supporting evidence regarding this claims. As such, I find that the tenant has failed to meet her burden of proof regarding these claims and is dismissed without leave to reapply.

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In this case, the tenant and the landlord have both confirmed in their direct evidence that despite the tenancy ending on November 1, 2021, the tenant has not provided her forwarding address in writing requesting the return of her \$550.00 security and \$550.00 pet damage deposits. As such, the tenant is pre-mature in her application. The tenant's application is dismissed with leave to reapply.

Conclusion

The tenant's application is dismissed.

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 29, 2021

Residential Tenancy Branch