



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNETC, FFT**

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

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

Is the tenant entitled to any monetary award as claimed?

Is the tenant entitled to recover the filing fee from the landlord?

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. This tenancy began on November 15, 2019 and ended on January 15, 2021. The monthly rent was \$3,700.00 payable on the first of each month. A security deposit of \$1,850.00 was paid at the start of the tenancy and was dealt with in accordance with an earlier decision of this Branch under the file number on the first page of this decision. The rental unit is a suite in a multi-unit strata managed building.

In their application the tenant seeks a monetary award of \$22,350.00. The tenant submitted a monetary order worksheet setting out their claim as follows:

Item	Amount
5 Month Rent at \$3,700.00	\$18,500.00
Moving Costs	\$1,650.08
Emotional Damage	\$2,000.00
Damage Deposit	\$1,850.00
TOTAL	\$24,000.08

I note that the amount claimed in their application and the amount of their monetary order worksheet differ. The tenant provided no intelligible explanation as to the discrepancy.

A copy of the tenancy agreement was submitted into evidence. The agreement provides that the tenancy begins on November 15, 2019 as a one-year fixed-term tenancy which becomes a month-to-month tenancy at the end of the fixed term.

The tenant submits that by the strata rules the landlord was not authorized to rent the unit for more than the one-year fixed term despite representing to the tenant that the tenancy would continue on a month-to-month basis after the initial term. The tenant testified that the landlord threatened the tenant with shutting off water and utilities to the rental unit if they remained in the rental unit beyond the one year fixed-term. The tenant characterizes the landlord as bullying and forcing them to vacate the rental unit. The tenant submitted some correspondence between the parties as evidence.

The landlord disputes the tenant's characterization of their actions and submits that the strata allowed a hardship exemption to their prohibition on rentals in the building. The hardship exemption was for a period of one year and expired at the end of the fixed term tenancy. The landlord submits that their correspondence to the tenant were making them aware of the strata restrictions and actions the strata may take rather than threats.

Analysis

The principle of *res judicata* prevents re-litigation of a matter than has been conclusively determined in an earlier hearing. I find that the issue of the security deposit for this tenancy has been conclusively determined in the decision of May 31, 2021 where the presiding arbitrator wrote:

I grant permission to the Landlord to keep the security deposit they are holding for this tenancy in partial satisfaction of this award.

I therefore find the present attempt by the tenant to claim for a return of the deposit to be barred by the principles of *res judicata* and dismiss this portion of their claim without leave to reapply.

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 find the tenant has not met their evidentiary burden on a balance of probabilities. The tenant's submissions consist of complaints about the landlord which I find is not supported in the evidentiary materials. I find an ordinary reading of the correspondence between the parties to not be characterized as harassment or threats but simply informing the tenant of possible steps the strata may take. I further find that the document submitted titled Notice of Termination would have had no effect as its form and content is deficient in several aspects from the requirements of section 52 of the *Act*. In any event it is clear that the document had no effect on this tenancy as it

provides an end of tenancy date of November 15, 2020 and the parties agree the tenant remained residents of the suit until January 2021.

I find the evidence does not support the tenant's claim that there has been a breach on the part of the landlord. I find little evidence of any action or inaction that would be characterized as harassment or bullying. The tenant testified that they ultimately vacated the rental unit due to the living conditions but I find little evidence that the landlord was in breach of the Act, regulations or tenancy agreement. I therefore find no basis for a monetary award as claimed and dismiss the balance of the tenant's application.

As the tenant was unsuccessful in their application, they are not entitled to recover their filing fee from the landlord.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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 5, 2021

Residential Tenancy Branch