



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNRT, MNSD

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; a monetary order for the cost of emergency repairs; and for a monetary order for return of all or part of the pet damage deposit or security deposit.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

No evidence has been provided by either party however the landlord insisted several times during the hearing that he scanned and uploaded several photographs and documents. An error obviously occurred because the only evidence uploaded from the landlord is a note uploaded 4 times that states: "Dear Residential Tenancy Board, Please find enclosed evidence and documents that will be relied upon by the Respondent (VM) in regards to the claim filed by (the tenant). Kindly confirm receipt of same and confirm the adjudicator has also received same. I will ensure the applicant also receives a copy."

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for damage to the tenant's vehicle and moving expenses?
- Has the tenant established a monetary claim as against the landlord for the cost of emergency repairs?

- Has the tenant established a monetary claim as against the landlord for return of the security deposit?

Background and Evidence

The tenant testified that this fixed-term tenancy began in August, 2018 and was to expire after a year. The tenant vacated the rental unit on January 8, 2020. Rent in the amount of \$2,500.00 was payable on the 1st day of each month, and there are no rental arrears, but the tenant did not pay rent for January, 2020. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,250.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a single family home, and a tenancy agreement exists in writing but a copy has not been provided for this hearing.

The tenant further testified that there were numerous rats on the rental property and the tenant told the landlord who said that the tenant could call pest control. The tenant did so at a cost of \$367.00. The landlord did nothing.

The rats caused damage to the tenant's car, leaving feces in the engine. The cost for repair was \$440.00. No major repair was caused, and there was not an electrical problem with the vehicle. The bill is dated December 20, 2018.

On January 1, 2020 the tenant called the landlord saying she was moving out, and gave a notice to end the tenancy by mail on January 2, 2020 and believes the landlord received it the same day. The notice said that the tenant would be moving out by January 10, 2020. The tenant and her young child couldn't eat inside the rental unit due to rodents, and moved out very quickly. The tenant claims \$629.00 for moving expenses.

The tenant sent to the landlord a note by mail in January, 2020 which contained the tenant's forwarding address.

The landlord testified that the security deposit was \$1,250.00 but has not returned it to the tenant. The tenant didn't pay the rent in January and when the landlord approached the tenant, the tenant had changed the lock to the rental unit and had sub-let the rental unit without the landlord's knowledge.

The landlord gave the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 2, 2020 and the tenant refused to sign it and told the landlord very clearly that the landlord could keep the security deposit and have possession of the

rental unit by January 8th or 9th, but the tenant had to move due to rats. The tenant didn't return the key and didn't return any of the landlord's calls.

The tenant didn't give the landlord an invoice for pest control, and the landlord testified that he had a pest control company attend in December, 2018. The landlord called the pest control company several times but the pest control personnel could not get in; the tenant was not there to let them in.

The tenant sent the landlord a letter on June 23, 2021 and the envelope contained the address of the tenant.

Analysis

Where a party makes a claim as against another party for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the tenant has not provided any evidence of the cost of the pest control company, or of the cost to repair the vehicle, or the cost of moving expenses and therefore has not satisfied element 3 in the test for damages. Therefore, I dismiss those claims entirely.

With respect to the security deposit, a landlord must, unless the tenant otherwise agrees in writing, return a security deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application and serve the tenant claiming against the security deposit within that 15 day period. If the landlord fails to do so, the landlord must repay double the amount to the tenant.

In this case, the tenant testified that she sent a letter to the landlord on January 2, 2020 which contained the tenant's forwarding address. The landlord disputes that, and the tenant has not provided any evidence to support her testimony.

The landlord testified that he received an envelope from the tenant which contained the tenant's address on June 23, 2021. The tenant filed this application on June 14, 2021

and was provided with a package by the Residential Tenancy Branch on June 23, 2021 to serve to the landlord. I am satisfied that the documents in that envelope contained the Hearing Package documents, including notice of this hearing.

The landlord testified that the tenant told the landlord clearly that he could keep the security deposit, however the law requires that such consent must be in writing. In this case it is not in writing.

I find that the tenant's forwarding address is deemed to have been received today, November 2, 2021. **The landlord will have 15 days from today's date to return the security deposit to the tenant in full or to make an application claiming against it. If the landlord fails to do either, the tenant will be at liberty to apply for double the amount, and I dismiss this portion of the tenant's application with leave to reapply.**

Conclusion

For the reasons set out above, the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

The tenant's application for a monetary order for the cost of emergency repairs is hereby dismissed without leave to reapply.

The tenant's application for a monetary order for return of the security deposit is hereby dismissed with 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 02, 2021

Residential Tenancy Branch