



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, MNDCT, OLC

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation or tenancy agreement, pursuant to section 67; and
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62.

I left the teleconference connection open until 11:46 A.M. to enable the landlord to call into this teleconference hearing scheduled for 11:00 A.M. The landlord did not attend the hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Preliminary Issue - Service

The notice of hearing dated October 30, 2021 states:

01. I want to reduce rent for repairs, services or facilities agreed upon but not provided - \$850.00: The house has a problem of anger, erratic behaviour, yelling, swearing, and

name calling. I shouldn't have to pay rent to live here. I should have rent reduction. There have been 911 calls. For the safety of my life, please help me to move from here immediately.

02. I want compensation for my monetary loss or other money owed - \$1,275.00: On October 18th, the landlord kicked my bedroom door. The door frame to my rental unit is shattered, and the door will not lock or close. He threatened to hit me with a chair. Shoes (\$200) and marijuana (\$40) was stolen from my room. He kicked my computer, which I had repaired at a computer shop (\$75). Please help me financially and with the police to move immediately to a motel for \$1100/month.

I accept the tenant's testimony that the landlord was served with the notice of hearing and evidence (the materials) in person on October 30, 2021 at 2:00 P.M., in accordance with section 89(1)(a) of the Act.

The tenant affirmed he applied for dispute resolution seeking to obtain an order for the return of the security deposit (the deposit) and monetary compensation of one month of rent in the total amount of \$1,275.00. The tenant affirmed the claim for rent reduction in the amount of \$850.00 is part of the claim for compensation in the amount of \$1,275.00.

Later the tenant affirmed he is not seeking compensation for the shoes, but he is seeking compensation for the marijuana and the computer repair.

The application submitted by the tenant does not indicate the tenant is seeking compensation for the marijuana, the computer repair and motel expenses.

I accept the tenant's claim for compensation under section 38 of the Act for the return of the deposit in the amount of \$425.00 and under section 67 of the Act for monetary compensation in the amount of \$850.00. The total amount of the claim is \$1,275.00.

The tenant submitted an amendment (RTB form 42T) dated November 14, 2021. The tenant affirmed he served the amendment and the monetary order worksheet by leaving a copy in the landlord's mailbox on November 16, 2021.

Page 1 of the amendment form states: "Provide a copy of this completed form to every respondent by registered mail, in person or to an email address provided for service".

Rule of Procedure 4.6 states:

Serving an Amendment to an Application for Dispute Resolution

As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.

Section 89(1) of the Act states:

An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (f) by any other means of service provided for in the regulations.

Based on the tenant's testimony, I find the tenant did not serve the amendment in accordance with section 89(1) of the Act. Thus, I do not accept the amendment.

Issues to be Decided

Is the tenant entitled to:

- 01. an order for the landlord to return the deposit?
- 02. a monetary order for loss?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the tenant's obligation to present the evidence to substantiate the application.

The tenant affirmed the tenancy started on October 01 and ended on October 30, 2021. Monthly rent was \$850.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$425.00 was collected and the landlord holds it in trust. This application was submitted on October 26, 2021.

The tenant did not provide his forwarding address to the landlord.

The tenant submitted into evidence a receipt dated October 01: "For rent @ [rental unit's address] 425 for damage 850 for rent".

The tenant is seeking monetary compensation in the amount of \$850.00 because the landlord was abusive, the rental unit's door was broken, and the living condition was horrible.

The tenant affirmed the landlord kicked the rental unit's door on October 18, 2021 and yelled at him. The tenant affirmed the landlord kicked the rental unit's door 5 or 6 times. The landlord has mental health issues.

The tenant stated that on October 19, 2021 the landlord turned the electric breaker off, entered his rental unit and damaged his computer. The tenant pointed two knives at the landlord and threatened the landlord. The police were called and arrested the tenant. The tenant was released on October 20, 2021 and noticed that his shoes and marijuana were missing. The tenant found the shoes in the rental unit's rafter on October 29, 2021 and did not find the marijuana.

The tenant affirmed the landlord punched him four times in the head on October 30, 2021 when he served the notice of hearing. The tenant submitted photographs of the injuries suffered on October 30, 2021.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

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

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

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Deposit

Section 38(1) of the Act requires the landlord to either return the deposit in full or file for dispute resolution for an authorization to retain the deposit 15 days after the later of the end of a tenancy and upon receipt of the tenant's forwarding address in writing.

I accept the tenant's testimony that he did not serve the forwarding address.

Per section 38(1) of the Act, I find the tenant is not entitled to an order for the return of the deposit, as the tenant did not serve the forwarding address

I dismiss the tenant's claim for an order for the return of the deposit with leave to reapply.

Monetary compensation

The tenant's testimony about the living condition was vague. I find the tenant failed to prove, on a balance of probabilities, that he suffered damage due to the landlord's failure to comply with the Act from October 01 to 26, 2021. Furthermore, the tenant occupied the rental unit until October 30, 2021.

I note the physical assault and the injuries mentioned by the tenant happened after the tenant submitted the application and are not at issue in this application.

As such, I dismiss the tenant's claim for compensation in the amount of \$850.00.

Conclusion

I dismiss the tenant's claim for an order for the return of the deposit with leave to reapply.

I dismiss the tenant's claim for a monetary order for loss 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: December 06, 2021

Residential Tenancy Branch