



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC

Introduction

The Tenant filed their Application for Dispute Resolution (the “Application”) on September 11, 2021. They seek the Landlord’s compliance with the legislation and/or the tenancy agreement. They made an amendment to the Application on November 17, 2021, asking for monetary compensation. The matter proceeded by hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 25, 2022.

Both the Tenant and the Landlord attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matter – Tenant’s service of their prepared evidence

At the beginning of the hearing, the Landlord confirmed they received the Tenant’s documentary evidence that the Tenant prepared in advance. The Tenant delivered this in person to the Landlord with the Notice of Dispute Resolution.

The Tenant provided they did not receive materials from the Landlord. They confirmed they did not provide a forwarding address, nor an email address, to the Landlord at the end of the tenancy. The Landlord communicated their need for evidence delivery to the Tenant on January 15 and January 17, and according to the Landlord the Tenant would not accommodate the Landlord’s request for an address for service. The Landlord then left their prepared evidence at the former rental unit for the Tenant to retrieve and advised the Tenant of this via text message. The Tenant stated in the hearing they did not pick up the evidence because it was not provided according to the timelines given to a respondent for their evidence submissions.

Despite the Landlord's difficulty with service of their evidence to the Tenant, I advised the parties in the hearing that the matter was proceeding. The *Residential Tenancy Branch Rules of Procedure* sets out the rule for the respondent's evidence. By Rule 3.15, they must ensure their evidence is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Service must be completed in a manner prescribed by s. 88 of the *Act*, or s. 43 of the *Residential Tenancy Regulation*. This is not less than seven days before the hearing. I advised the parties at the outset of the hearing that individual pieces of evidence that the Landlord may rely upon as proof of their testimony may or may not be considered depending on the scenario and the way they rely on it. On any relevant piece, I would decide whether the Tenant needed the opportunity to review that specific piece. This is an application of Rule 3.17.

On my review of all of the evidence submitted, I note certain documents prepared by the Tenant appeared in the Landlord's evidence they provided to the Residential Tenancy Branch. One piece in particular was not provided by the Tenant to the Residential Tenancy Branch. I made note of this particular piece in the hearing and gave the Tenant the opportunity to provide that document, along with an invoice they rely on, to the Residential Tenancy Branch on the same day of the hearing. This was to ensure the document copy provided by the Landlord had not been altered in any way, as a measure of surety to the Tenant. The Tenant agreed to do so and provided a document to the Residential Tenancy Branch the same day. That particular document is discussed below where I analyze the Tenant's evidence.

Preliminary Matter – amended Application issue

The Tenant applied for a consideration of the Landlord's obligation to comply with the *Act*, the regulation, and/or the tenancy agreement. On their Application they did not provide a description of this issue. On my review, I find the Tenant is asking for compensation for monetary loss to them in the past. This was the subject of the hearing and the review of their evidence with input from the Landlord in response. I have amended the Tenant's Application to reflect this issue, and the proper issue for consideration is listed below. The second listed issue is in line with the Tenant's amendment of November 17, 2021.

Preliminary Matter – Landlord's compensation

The Landlord confirmed they did not file a counterclaim for compensation. They provided evidence and submissions on amounts they feel owed for utilities. I informed the parties in the hearing that I was unable to make any finding of award based on those issues with no application in place from the Landlord. These issues and associated evidence receive no consideration herein.

Issues to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Tenant entitled to a return of the security deposit and pet damage deposit, pursuant to s. 38 of the *Act*?

Background and Evidence

In the hearing I confirmed the basic information about the tenancy agreement in place between the parties. The tenancy started in 2013, and the Tenant paid a security deposit of \$690 and a pet damage deposit of \$300. The rent increased over the duration of the tenancy, to \$1,607 in December 2019. This amount remained in place until the end of the tenancy.

The Tenant moved out from the rental unit on November 5, 2021. This was the result of the Landlord issuing a Two-Month Notice to End Tenancy for Landlord's Use of Property, setting the tenancy end date for October 31, 2021.

The parties met on November 5, 2021. At this time the Tenant did not provide a forwarding address to the Landlord. In the hearing the Tenant described how they reviewed the condition of the rental unit with the Landlord, and they were happy with everything, but requested oven cleaning and removal of furniture. The Landlord then called the next day and would not return the deposits. The Landlord described this situation as their agreement to the return of the deposits; however, they did not waive their right to claim for utility amounts that were still owing.

On May 14, 2021 the Tenant penned a note to the Landlord making a tentative claim for amounts owing to them. They requested this payment from the Landlord for the end of May 2021. This listed the following items that total to \$5,280:

- two kitchen faucets, \$140 each = \$280
- railings and handles to facilitate the Tenant's own movement = \$2,000
- building/redo on back deck = \$1,000
- two basement floods = \$500

The Tenant did not indicate this amount on their Application and did not provide this amount on their amendment. The Landlord did not approve extra work the Tenant completed on the deck, and the Landlord added that they responded to the basement floods, resolved with "roto-rooter".

The Tenant began improvements to the deck area using weather-treated lumber, at their own expense. They stated the Landlord would not repair the area after their requests to them. This work began in September 2018 and continued sporadically as individual pieces of wood would require replacement. The Tenant provided receipts in their evidence; the Landlord noted the copies forwarded to them were illegible and not clearly visible. The Landlord in the hearing maintained the Tenant did not ask about deck repair.

To assist with their disability, the Tenant via their compensation entitlement had bars installed inside and outside. In the hearing, they confirmed that this expense was paid for by the monetary amount granted for their claim. They stated: "WCB [i.e., workers' compensation board] paid for this." In the hearing they posited this adds value to the rental unit, where the Landlord would then be able to re-rent the unit as accommodating to individuals needing mobility assistance. The Landlord clarified that the Tenant's request for this required the Landlord's own signature on the application in that process.

The Tenant also listed items on a separate monetary order worksheet, dated September 24, 2021. This was provided in the Landlord's evidence, and the Tenant did not provide this single piece of evidence on their own. The Tenant could not locate this individual piece when queried during the hearing. This calculated amount is \$3,937.17, including: wood total expenses, with screws: \$1,303.20; "handicap bars": \$1,000; oil: \$1,634.07.

The Tenant described how they filled the basement fuel tank in the system that is used for heating. When the tenancy ended, there was approximately \$1,200 worth of fuel left in the tank, based on their measurement system. They alluded to a receipt from a local facility that they hired for that task over the years; however, they did not provide this in their evidence. I also requested specifically for the Tenant to submit this on the same

day of the hearing. The Landlord described their understanding of the fuel tank-filling process.

I allowed the Tenant the opportunity to re-submit the September 24, 2021 monetary worksheet as evidence. After the hearing, the Tenant submitted to the Residential Tenancy Branch a newly completed form dated January 25, 2022, providing the amount of \$7,200. This form was not provided to the Landlord. These amounts are as follows:

- two kitchen faucets: \$280
- railing out front: \$1,000
- railing bathroom: \$1,000
- rear deck: \$2,000
- two basement floods: \$1,000
- plus labour: \$820
- oil furnace: \$1,200

The Tenant amended their Application on November 17, 2021. They claim \$990, being the total of the security and pet damage deposits they paid at the start of the tenancy. On the Condition Inspection Report provided by the Landlord, there is no forwarding address in the required space. Moreover, the Tenant did not sign to show they agree to the Landlord keeping the security deposit to apply against any assessed amount of damages.

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;

3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I find the Tenant has not completed a clear list of their claimed amounts as required. The total amount claimed by the Tenant was not provided on their Application, though the evidence they provided seems to imply they were making a claim for compensation. The Tenant did not provide a clear statement of their claim to the Residential Tenancy Branch. I provided the opportunity to the Tenant to provide that Monetary Order Worksheet, to ensure the copy submitted by the Landlord in their evidence was not altered. The Tenant was not able to comply with that request and submitted a different claim amount on the day of the hearing. I find this document originated with the Tenant and bears their signature; therefore, I find there is no need for them to separately review that document which they generated on their own and provided to the Landlord.

Aside from the worksheet submitted on January 25, I find the documents submitted by the Tenant are random receipts and not presented in a clear and legible fashion. When the bulk of the Tenant's evidence was provided to the Residential Tenancy Branch via the Landlord who was the Respondent here, I find it is not readily identifiable, organized, clear and legible.

I consider individual pieces of the Tenant's claim as follows:

- The basement floods are not quantified in terms of work deemed necessary or completed by the Tenant. I am not satisfied that a damage or loss to the Tenant exists from these flood events. There is no award for this piece of the Tenant's claim.
- The Tenant provided testimony that extra railing was installed inside and outside to assist with their physical needs. There is no evidence the Tenant was out-of-pocket on their own for the installation, and the Tenant stated that an award for compensation paid for those items. I find there was no damage or loss to the Tenant here, and no award. Additionally, there is no evidence to establish the value thereof.
- The Tenant did not establish the need or value of two kitchen faucets; therefore, I make no award for this piece.
- The Tenant alternately placed the value of work on the deck at \$1,000 (as of May 2021) and \$2,000 (as on their worksheet dated January 25, 2022). They did not provide sufficient evidence to show either of these amounts as expenses. Further, I am not satisfied of the need for repairs, and there is no evidence the Tenant minimized their claim by engaging the Residential Tenancy Branch

dispute resolution process where they deemed the Landlord's response to their request for repairs as inadequate. I find it would be unfair for the Landlord to pay for this work where it was not authorized and involved a series of repairs to the Landlord's property. Because of the differing values they put on this claim, with a lack of clear disclosure of their evidence for this to the Landlord, I make no award here.

- The Tenant added \$820 in labour to their claim. I find this number is not quantified with any record of the work completed in terms of dates and work completed. I am not satisfied a damage or loss exists.
- The Tenant did not provide a receipt to show the amount they paid for heating oil. They claimed the full amount of a receipt from summer 2021, at \$1,634.07. I required the Tenant to provide this receipt and they did not do so. Therefore, there is no proof of their loss, and I make no award for this portion of their claim.

For the reasons above, I dismiss the Tenant's claim for reimbursement.

Regarding the return of the security deposit, the most important consideration is the forwarding address not provided to the Landlord.

To govern the security deposit, the *Act* s. 38(1) requires that a landlord must repay deposits or make a claim against them by filing an application for dispute resolution within **15 days after receiving a tenant's forwarding address in writing or the end of the tenancy**.

In this case, the Tenant confirmed they did not provide a **written forwarding address** to the Landlord. The Tenant's address on the Notice of Dispute Resolution, provided to the Landlord in line with the Tenant's Application, is not sufficient for these purposes.

Pursuant to s. 38(1)(b), as the Tenant has not provided their forwarding address in writing to the Landlord, the Landlord's obligation to return the deposit has not been triggered. The Tenant is not entitled to the return of the deposits until their written forwarding address has been provided to the Landlord. Note that the Landlord has a timeframe after that event in which they may apply for monetary compensation against the deposits.

Because there is no record of the tenant providing their address to the landlord as the *Act* requires, there is no return of the security deposit by the landlord here. For these reasons, this portion of the tenant's claim is dismissed.

Conclusion

The Tenant's Application is dismissed, with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: January 26, 2022

Residential Tenancy Branch