



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On October 31, 2021, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing; however, the Landlord did not attend at any point during the 44-minute teleconference. At the outset of the hearing, I informed the Tenant that recording of the hearing was prohibited and she was reminded to refrain from doing so. As well, the Tenant provided a solemn affirmation.

The Tenant advised that the Notice of Hearing package was served to the Landlord by registered mail on November 4, 2021 (the registered mail tracking number is noted on the first page of this Decision). She submitted the tracking history which indicated that this package was refused. As well, she stated that prior to making the Application, she drove past the property and would see the Landlord’s vehicles parked there. Moreover, she conducted a Google 411 search of the Landlord and it indicated that this was still the Landlord’s address. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was deemed to have received the Notice of Hearing package five days after it was mailed.

She then advised that one evidence package was served to the Landlord by registered mail on November 9, 2021 (the registered mail tracking number is noted on the first page of this Decision). She testified that this package was refused as well. Based on this undisputed evidence, and in accordance with Section 89 of the *Act*, I am satisfied that the Landlord was deemed to have received the Tenant’s evidence package five days after it was mailed. As a result, this evidence package was accepted and will be considered when rendering this Decision.

Finally, she advised that she served an additional evidence package to the Landlord by registered mail on May 9, 2022 (the registered mail tracking number is noted on the first page of this Decision). She testified that there was a problem delivering this package, and it was eventually returned to sender. She stated that she conducted a Google 411 search and discovered that the Landlord had moved to a different address. Based on this testimony, and as this evidence would have been served late contrary to the timeframe requirements of Rule 3.14 of the Rules of Procedure, this evidence was excluded and will not be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to monetary compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

She advised that the tenancy started on April 1, 2016, and ended when the Tenant gave up vacant possession of the rental unit on October 31, 2019. Rent was established at \$725.00 per month and was due on the first day of each month. A security deposit of \$350.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She stated that she is seeking compensation in the amount of **\$600.00** because the Landlord approached her in February 2019 with a proposal to take over a room in the rental unit for the Landlord's use. She testified that the Landlord informed her that he would need this room back for his growing family, and that if she did not agree to it, he would serve her with a notice to end her tenancy instead. She submitted that the

Landlord did not agree to compensate her any rent for this reduction in her rental unit. She stated that she agreed to this only because she feared eviction, and that the Landlord took over this space on May 7, 2019. She referenced documentary evidence submitted to support her position of the Landlord's threat of eviction and the reduction of her living space. She stated that the compensation is equivalent to the loss of the living space from May 2019 to October 2019.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 27 of the *Act* outlines that the Landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the Tenant's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?

- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

Regarding the Tenant's claim for compensation owed to her in the amount of \$600.00, I find it important to note that Section 27 of the *Act* prohibits the Landlord from terminating a service or facility, under specific conditions. However, the undisputed evidence is that the area under dispute is not a service or facility. Rather, this was part of the actual rental unit that was provided to the Tenant under the tenancy agreement. As there is no provision in the *Act* for the Landlord to arbitrarily take away parts of the rental unit, I am satisfied that the Landlord breached the *Act*.

However, given the undisputed evidence provided by the Tenant, I am not satisfied that she took any steps to correct the Landlord's contravention of the *Act*. While I note that she failed to mitigate this loss, I accept that this was due to the threat of eviction that she faced. As there was an undoubted breach of the *Act* by the Landlord, but because the Tenant did not mitigate this loss, I find that the Tenant's claim be reduced to an amount of loss equivalent to **\$300.00**.

As I am satisfied that the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Item	Amount
Compensation for loss of rental unit	\$300.00
Filing fee	\$100.00
Total Monetary Award	\$400.00

Conclusion

Based on the above, the Tenant is provided with a Monetary Order in the amount of **\$400.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed

in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: May 30, 2022

Residential Tenancy Branch