



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

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

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant AB attended the hearing by way of conference call, the landlord did not. I waited until 1:47 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant 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. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided sworn, undisputed testimony that the landlord was served with the tenants' application for dispute resolution and evidence package on December 9, 2021 by way of registered mail. The tenant provided the tracking information in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find the landlord deemed served with the tenants' application and evidence. The landlord did not submit any written evidence for this hearing.

Issues(s) to be Decided

Are the tenants entitled to a monetary order for money owed or monetary loss?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The tenant AB testified that they had entered into an agreement to rent the rental unit for \$1,800.00 per month, payable on the first of the month beginning on November 1, 2021. The tenant testified that a security deposit of \$900.00 was paid, which was returned to the tenants. No written tenancy agreement was provided to the tenants.

The tenant testified that the landlord had threatened the tenants on November 27, 2021 after an argument had taken place. The tenant testified that the landlord had shown up banging on the door with no notice, accusing the tenant of parking in the wrong parking spot. The tenant testified that they had no choice but to move by November 28, 2021 as the landlord had threatened to throw the tenants' belongings out. The tenant vacated the rental unit by November 28, 2021.

Since that date, the tenant testified that they have been unable to find housing, and faced significant hardship after being displaced. The tenant testified that without proper housing, they are unable to secure employment. The tenant believes the landlord wanted to rent out the rental unit for more rent.

The tenant is seeking compensation equivalent to two month's rent, as well as \$10,000.00 as the tenant "wants the guy to learn a lesson".

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (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.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

The tenants requested a monetary order of \$10,000.00 as they wanted the landlord to “learn a lesson”. The amount requested appears to be a penalty that the tenants feel should be applied for the landlord’s non-compliance with the *Act* and legislation. Under section 87.3 of the *Act*, “Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has

- (a)contravened a provision of this Act or the regulations,
- (b)failed to comply with a decision or order of the director, or a demand issued by the director for production of records, or
- (c)given false or misleading information in a dispute resolution proceeding or an investigation.

I note that the Director has not delegated to me the authority to impose administrative penalties under section 87.3 of the *Act*. That authority has been delegated to a separate unit of the Residential Tenancy Branch. The administrative penalty process is separate from the dispute resolution process. The Compliance and Enforcement Unit (CEU) is a

team within the Residential Tenancy Branch, and the tenant may pursue the appropriate remedied through this process if they wish. As I do not have the delegated authority to administer any penalties under section 87.3 of the *Act*, I decline to make any orders under this section.

Additionally, the tenants requested the equivalent of two month's rent for having to move out without proper notice. Although I am highly sympathetic about how the tenants were treated by their landlord, as noted above, the tenants bear the burden of proof in supporting the actual value of their loss, and that this loss stemmed directly from the other party's violation of the tenancy agreement of the *Act*.

As noted in RTB Policy Guideline #16 about compensation:

D. AMOUNT OF COMPENSATION

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

As noted above, the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. I find that the tenants failed to support how they had calculated the amounts claimed, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the losses the tenants are seeking in this application. As stated by the tenant in their own words during the hearing, the tenant wanted the landlord to learn a lesson. The amounts claimed by an applicant must not include any punitive element, which I find to be the case for this application. On this basis I dismiss the tenants' monetary claims for losses without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenants were unsuccessful with their application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application. The tenants must bear the cost of this filing fee.

Conclusion

The tenants' entire application is dismissed 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: June 29, 2022

Residential Tenancy Branch