



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, DRI, FFT**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- For a monetary order for damage or compensation pursuant to section 67 of the Act
- Cancellation of a rent increase pursuant to section 41 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlord BC and tenant RK appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to RTB Rules of Procedure 6.11. The parties were affirmed.

The landlord testified that she received the tenant’s dispute notice and materials and based on her testimony I find the landlord duly served in accordance with sections 88 and 89 of the Act.

The tenant stated he did not receive the landlord’s materials. The landlord testified that she served the tenant at the address for service that the tenant listed on the dispute notice. She served the materials by registered mail on October 2, 2022. She did not provide proof of service in evidence. However, the tenant provided a photo of the landlord’s package, with the address for service provided on the dispute notice, and with a date of October 21, 2022. Therefore, the tenant is deemed to be served with the landlord’s materials on October 26, 2022 pursuant to sections 88 and 90 of the Act.

Issue(s) to be Decided

1. Is the tenant entitled to a monetary order for compensation?
2. Is the tenant entitled to an order cancelling an illegal rent increase?
3. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on November 15, 2020 and is currently month to month. Rent is \$1,650.00 per month payable on the 15th day of the month. A security deposit of \$800.00 has been returned to the tenant. The tenant vacated the residence pursuant to an order of possession on September 14, 2022. The rental unit was fully furnished.

The tenant stated that he is claiming compensation for several items:

1. The tenant stated that the mattress in the rental unit hurt his back. He is claiming chiropractor costs of \$180.00. The tenant is also claiming storage costs for the mattress provided by the landlord of \$100.00 per month for five months for a total of \$500.00. He is claiming those costs as he purchased his own mattress to use in the rental unit. He is also claiming compensation for the mattress he purchased on a pro-rated basis for the five months he used the mattress while in the residence. The amount claimed is \$467.50. The tenant still possesses the mattress that he purchased.
2. The tenant is claiming \$1,751.80 for internet from July 2021 to June 2022. He testified that internet was included in the rent but the internet was not working in a manner acceptable to the tenant. The landlord initially reduced his rent by \$50.00 per month and suggested he get his own internet. The landlord then changed her mind and requested that he pay back the \$675.00 which constituted the amount of the initial rent reduction. The tenant paid the landlord back the \$675.00.
3. The tenant is claiming compensation for windows that he alleged were dirty. He is claiming \$100.00 per month for five months for a total of \$500.00. He testified that he did not clean the windows himself and he did not hire someone to clean the windows. He stated that his compensation claim is for loss of use and enjoyment of the rental unit due to the dirty windows.

The landlord stated that the mattress was not broken and was good condition. Nonetheless she offered the tenant a new mattress that she had recently purchased for her family's use. She stated that she required the tenant to remove the temporary mattress he had borrowed, prior to providing him with the new mattress.

The tenant refused to remove the temporary mattress, therefore she did not provide the new mattress as she was concerned about too many items in the rental unit, and felt it was a safety issue with three mattresses in the rental unit. She testified that she required the tenant to store the previous mattress as it was part of the rental unit. He had been storing bicycles in a closet and she told the tenant that bicycles needed to be stored in the garage, this freeing up space to store the previous mattress.

The landlord further stated that the tenants who currently occupy the rental unit use the previous original mattress and have no complaints. She also testified that the tenant had advised her that he had back issues prior to occupying the rental unit. She provided a text from the tenant in evidence where he stated that he had previous back issues.

The landlord testified that there were no issues with the internet in the rental unit. She further stated that she initially gave the tenant a reduction in rent of \$50.00 per month as a gesture of good faith because the tenant advised that he was starting a home business. She later contacted the city and she was advised that the tenant did not have a business licence. She was advised by a by-law officer who had a conversation with the tenant, that the tenant advised the by-law officer he did not have a business. She provided in evidence a text message from a by-law officer as confirmation.

She therefore asked the tenant to repay the deducted rent as he had not started as business as he claimed. She also provided a video in evidence of her husband showing the tenant that the internet is in working order. She testified that the current tenants are using the same internet and have made no complaints. It is the landlord's position that she did not terminate or restrict a service as contemplated by the Act and that the internet service provided by the landlord remained the same throughout the tenancy.

With respect to the windows, the landlord testified that the windows were cleaned yearly in the fall. The last time they had been cleaned was in September 2021. The tenant's complaints of the dirty windows were in March 2022. She then advised the tenant she was happy to move up the window cleaning date, but wished to complete the construction that the landlord was doing in the backyard prior to scheduling a window cleaning. Due to backyard construction the landlord stated the earliest date she could schedule the window cleaning was in September 2022. The tenant vacated the rental

unit prior to window cleaning. She provided photos of the rental unit windows in evidence taken August 5, 2022.

Analysis

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in Policy Guideline #16, in order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove their entitlement to a claim for a monetary award.

Section 27 of the Act states in part:

- 27** (1)A landlord must not terminate or restrict a service or facility if
- (a)the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b)providing the service or facility is a material term of the tenancy agreement.

The tenant signed a tenancy agreement which included furnishings and internet service. The landlord did not remove the initial mattress. The landlord did not remove or restrict internet service. The tenancy agreement did not specify a specific type of mattress or a specific speed of internet. Nonetheless the landlord attempted to accommodate the tenant and address his concerns by providing a replacement mattress and reducing the rent to allow the tenant to get his own internet service for the business he claimed to be starting. The landlord was not required to take any of these actions.

Further, the tenant was entitled to secure his own mattress if unhappy with the landlord's mattress, but as the landlord had provided a mattress as part of the rental agreement, the landlord was entitled to expect that the mattress remain in the unit. I find that none of the losses claimed by the tenant in respect of either the mattress or the internet stem from a violation of the tenancy agreement by the landlord. I therefore find that the tenant has not established that he is entitled to compensation for these items.

I find that the tenant has not established that the back issues he experienced stemmed directly from the mattress. He has provided chiropractor receipts in evidence. These receipts do not detail the cause the of the tenant's back issues. The tenant had back issues prior to occupying the rental unit. Further, the tenant has failed to demonstrate that the loss occurred due to a breach by the landlord of the Act or the tenancy agreement. I find that the tenant is not entitled to compensation for his chiropractor bills.

I find that the tenant has not established his loss of use and enjoyment of the rental unit as a result of dirty windows. The pictures of the windows taken by the landlord in August 2022 show that the windows are not extremely dirty, to the point of restricting the tenant's view. Further, even if the windows were dirty, the tenant did nothing to minimize his claim by either cleaning the windows himself, or if unable, hiring someone to clean the windows for him. The tenant is not entitled to compensation for dirty windows.

No evidence was provided by the tenant with respect to an illegal rent increase. Therefore the tenant's dispute respecting an illegal rent increase is dismissed

The tenant's application is dismissed. As the tenant was unsuccessful in his claim, he is not entitled to return of the filing fee for his application.

Conclusion

The tenant's application for compensation is dismissed in its entirety.

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: January 24, 2023

Residential Tenancy Branch