



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNE, MNDCT, OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on October 21, 2022 seeking:

- a cancellation of the Landlord’s 10-Day Notice to End Tenancy for Unpaid Utilities (the “10-Day Notice”)
- a cancellation of the Landlord’s One-Month Notice to End Tenancy for End of Employment (the “One-Month Notice”)
- compensation for monetary loss or other money owed
- the Landlord’s compliance with the legislation and/or tenancy agreement
- recovery of the filing fee for their Application.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 24, 2023. In the conference call hearing, I explained the process and provided the attending parties the opportunity to ask questions.

Preliminary Matter – parties’ disclosure of evidence

At the outset of the hearing, the Landlord confirmed they received the Notice of Dispute Resolution Proceeding from the Tenant via email. This included the Tenant’s evidence prepared for this hearing.

The Landlord provided that they sent their prepared evidence to the Tenant via registered mail. This was through a family member who lived closer to the Tenant in the location of the rental unit. The Landlord stated this was within the required timeline

before the scheduled hearing. The Tenant stated they did not receive registered mail from the Landlord for the purpose of this hearing.

The Landlord did not provide proof in the form of a registered mail tracking number that this was their method of service. Because of this I am not satisfied the Landlord sent their prepared evidence to the Tenant in this manner. I exclude the Landlord's evidence they provided to the Residential Tenancy Branch for this reason. There is no assurance that the Landlord shared all evidence with the Tenant for this hearing, as required.

Preliminary Matter – tenancy ending

In the hearing, the Tenant stated they were going to move out from the rental unit on February 28, 2023. This was in line with the One-Month Notice served previously by the Landlord.

Because the tenancy was ending imminently as of the date of this hearing, I find there is no need for rectifying the issue of whether the 10-Day Notice or the One-Month Notice was valid. Reciprocally, I will not resolve whether the Landlord is entitled to an Order of Possession via s. 55 of the *Act*. I dismiss the Tenant's Application for cancellation of both the 10-Day Notice and the One-Month Notice, along with their plea for the Landlord's compliance with the *Act*/tenancy agreement which is a matter that would be relevant if the tenancy were continuing.

Issue(s) to be Decided

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

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant provided a copy of the tenancy agreement in their evidence. This shows the tenancy started on February 1, 2022, set for a one-year fixed term to expire on February 1, 2023. The parties signed the agreement on January 31, 2022. The rent amount was \$2,200, plus \$50 parking, payable on the first of each month. The Tenant paid a security deposit of \$1,100, being one-half of the rent amount of \$2,200.

The Tenant on their Application provided the security deposit amount of \$1,125.

The parties verified in the hearing that the Tenant did not pay rent for the months of October, November, and December 2022, and January and February 2023. The Tenant presented that they did not have a viable means of paying rent to the Landlord as should normally happen. The Landlord disputed this point and stated the Tenant made no other offer for an alternate means of payment and had another contact method in any case.

The Tenant presented that they requested a refrigerator replacement from the Landlord and the Landlord did not fulfill this request for some time. The installation of the refrigerator, undertaken by the Landlord, caused a flood in the rental unit that left the Tenant without access to a certain portion of the rental unit, and damage to their personal items.

The Tenant presented that they spent money on meals they could not eat at home because of the lack of a refrigerator for three months. This was every day, 3 meals per day. On their Application, the Tenant provided the amount of \$1,500 as money owed to them. In the hearing, they stated this was for the amount they spent on eating out for one month and three weeks, from mid-May through to July 10.

In their evidence, the Tenant provided messages they sent to the Landlord in reference to the broken refrigerator. These messages continued into mid-June, where the Landlord questioned the timeline in which they were first informed of the problem. The Tenant included two images of the water coming from the refrigerator in the rental unit.

The Landlord stated they never received any notice from the Tenant about a faulty refrigerator until May 29. The Landlord travelled to the rental unit city to replace the refrigerator in early July. The Tenant could not accommodate the Landlord's scheduling to have the refrigerator replaced.

The Landlord submitted there was no damage in the rental unit resulting from the refrigerator leaking after they installed it. They closely inspected the Tenant's items at the time, and the Tenant agreed there was no damage to their personal items from the leak.

Analysis

Under the *Act* s. 7, 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 an 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 provided sufficient evidence to show the correct value of the loss to them. I find the Tenant was inaccurate with respect to dates they were needing to eat out because of not having a refrigerator, and there was no calculation of an out-of-pocket amount to them. I dismiss this piece of the Tenant's Application in which they specified \$1,500, with no evidence of that amount or a calculation thereof.

The Tenant mentioned damage to their personal items in the rental unit. This included equipment for their work. There is no evidence of such damage and I grant no award for any other amount to the Tenant. I find the Landlord credible on the specific point that they verified with the Tenant that there was no damage to the equipment the Tenant needed for work, or other items.

In sum, I dismiss the Tenant's Application in its entirety due to lack of full particulars on the claimed amount, and no evidence of any other loss to them. I dismiss the Application without leave to reapply.

The Tenant was not successful in this Application; therefore, I grant no portion of the Application filing fee granted to them.

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act* or the tenancy agreement, unless a tenant has a right under the *Act* to deduct all or a portion of the rent.

I find the Tenant in the hearing acknowledged that they had not paid rent from October 2022 through to February 2023. The Tenant here had no authorization to withhold rent or otherwise make a deduction for any of the issues that arose during the tenancy. I find the Tenant breached s. 26 by not paying rent as set out in the tenancy agreement. This is \$2,250 for each of the months listed.

The *Act* s. 62(3) sets out that I may make an order necessary to give effect to the rights and obligations under the *Act*. Moreover, s. 67 specifies that if a monetary loss results from a party not complying with the *Act* or the tenancy agreement, I may determine the amount of compensation, and order that party to pay.

As above, the Tenant had no authorization to withhold or reduce rent payable to the Landlord. I grant compensation to the Landlord, as per s. 67, for the full amount of rent owing. This is \$11,250.

Though the Tenant provided the amount of \$1,125 as the security deposit they paid, on a balance of probabilities with reference to the tenancy agreement in the evidence, I find that security deposit amount was \$1,100, being one-half of the rent amount, not including the monthly parking fee.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by a landlord. The Landlord has established a claim of \$11,250. After setting off the security deposit, there is a balance of \$10,150. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$10,150 as compensation for the rent amounts owing.

Conclusion

Pursuant to s. 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$10,150. I provide the Landlord with this Monetary Order in the above terms, and they must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with this Monetary Order, the Landlord may file this Monetary Order 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 s. 9.1(1) of the *Act*.

Dated: February 28, 2023

Residential Tenancy Branch