



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding BV Mark Investments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

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

- a monetary order for the return of all or a portion of their security deposit and/or pet damage deposit pursuant to sections 38;
- a monetary order for compensation for damage or loss 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 of the Act.

BT (the “tenant”) appeared at the hearing. RK appeared at the hearing as agent for the landlord (the “landlord”).

BT testified that they served the landlord the notice of dispute resolution package and supporting documentary evidence by registered mail. RK confirmed receipt of the same and indicated that they had no concerns surrounding service. Based on the foregoing, I find that pursuant to section 71(2) of the Act that the landlord was sufficiently served with the tenant’s application materials.

The parties were given full opportunity under oath to be heard, to present evidence and to make submissions. The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit?

Is the tenant entitled to a monetary order for damage or loss under the Act, regulation or tenancy agreement?

Can the tenant recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all of the details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's submissions and my findings are set out below.

The landlord submitted a Residential Tenancy Agreement (the "Agreement") which indicates that the tenancy commenced between AB, the previous owner of the building, and the tenant on October 1, 2020. Rent at that time was \$606.87 a month. The landlord testified that rent had been increased to \$750.00 since that time. The landlord testified that according to the Agreement no security deposit was collected from the tenant. The Agreement indicates \$0.00 in the space allotted for the security deposit and pet deposit amounts.

The landlord drew my attention to a document titled Buyer's Statement of Adjustments which is submitted into evidence. The landlord explained that this document was provided to him upon purchasing the building and supports that BT did not pay a security deposit. The landlord testified that according to his records no security deposit was paid by the tenant.

The tenant testified that while the rent was set to increase to \$750.00, the rent increased did not come into effect until February 2022 which was after the tenancy ended on December 31, 2021. The tenant testified that they paid a security deposit in the amount of \$225.00 to CO who was the owner of the building before AB.

The tenant submitted that upon selling the building to the landlord, AB advised them that their security deposit would be transferred with the sale of the building. Included in their evidence is a note which states:

I sold that building November 22. Damage deposit went to with [sic] the sale of the building.

The tenant testified that the note is signed by AB.

When questioned about a move-in and move-out inspection, the tenant testified that the landlord had been in their rental unit on a number of occasions. They stated that when they moved out, another tenant of the building, IS completed the move-out inspection. Included in the tenant's evidence is a note signed by IS which states:

I, IS, took the keys from BT when she had moved out of the apartment, as of December 31, 2021. The unit was left in presentable condition. The unit was left clean and washed.

The landlord testified that no move-in inspection was completed as the tenant was residing in the unit when they purchased the building and confirmed that IS conducted the move-out inspection with the tenant and found the unit was left in presentable condition. The landlord testified that the tenant removed a number of appliances from the unit upon moving out.

The tenant testified that they sent the landlord their forwarding address requesting the return of their security deposit on January 13, 2022, by registered mail. A copy of the letter and registered mail receipt is submitted into evidence. The tenant is seeking the return of their security deposit.

Finally, the tenant testified that the pipes in the rental unit froze on December 26, 27, 28, and 29th and that as a result the rental unit was uninhabitable, and the tenant was required to find alternate accommodation for those four nights. The tenant applied for a monetary award in the amount of \$124.96 for the return of rent paid to the landlord for the four nights they allege the rental unit was uninhabitable. The tenant also applied for a monetary award in the amount of \$128.56 to cover the costs incurred for finding different accommodation for the four nights.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their

case is on the person making the claim. In this instance, the onus is on the tenant to prove their claims on a balance of probabilities.

The tenant seeks a monetary order for the return of their security deposit in the amount of \$225.00. I have considered the testimony of the parties and while I acknowledge that the tenant believes they paid a security deposit, I find their evidence on this point vague. The tenant has not indicated the date the deposit was paid, how the deposit was paid, nor have they provided any transactional record of the payment.

On the contrary, the landlord has provided evidence in the form of a Residential Tenancy Agreement which is signed by both the tenant and the previous landlord, AB and indicates that no security deposit was paid by the tenant. The Buyer's Statement of Adjustments further supports that no security deposit was paid or at the very least that no security deposit was transferred from AB to the landlord at the time the landlord purchased the property. Ultimately, when I weigh this evidence against the evidence and testimony of the tenant, I find the tenant has provided insufficient evidence to establish on a balance of probabilities that the landlord is in possession of a security deposit paid by the tenant. On that basis, I dismiss the tenant's application for a monetary order for the return of a security deposit without leave to re-apply.

The tenant seeks a monetary order for the return of rent paid to the landlord for the four nights they allege the rental unit was uninhabitable because the pipes were frozen. They further seek monetary compensation to cover the costs incurred for finding alternate accommodation for the four nights.

I accept the undisputed evidence of the tenant that the pipes froze from December 26-29th, 2021 and that they sought accommodation elsewhere as a result. However, section 67 of the Act authorizes me to order a party to pay compensation to another party if damage or loss results from that party not complying with this Act, the regulations or a tenancy agreement. I find the tenant has provided insufficient evidence to establish on a balance of probabilities that the frozen pipes or the costs incurred by the tenant as a result of seeking alternate accommodation were caused by non-compliance of the landlord with the Act, regulations or tenancy agreement. While not stated by the tenant, I logically infer based on the time of year, that the pipes froze as a result of the weather which is not within the landlord's control. Ultimately, the tenant has not established that the landlord did not comply with the Act, regulations or tenancy agreement and therefore, I find the tenant is not entitled to the monetary relief sought in relation to the frozen pipes.

As the tenant was unsuccessful in this application, they are not entitled to recover the filing fee of this application from the landlord.

Conclusion

The tenant's applications are dismissed in their entirety 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: March 10, 2023

Residential Tenancy Branch