



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT

Introduction

This hearing was reconvened from a hearing on January 17, 2023 regarding the Tenant's application under section 67 of the *Residential Tenancy Act* (the "Act") to seek a Monetary Order of \$2,325.00 for the Tenant's monetary loss or money owed by the Landlord.

An interim decision was issued on January 17, 2023 (the "Interim Decision"). This decision should be read together with the Interim Decision.

The Landlord and the Tenant attended this reconvened hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Tenant was assisted by an advocate, KS during this reconvened hearing.

The parties acknowledged receipt of each other's documents as required to be served under the Interim Decision. I find the Landlord was served with the Tenant's notice of dispute resolution proceeding package and documentary evidence. I find the Tenant was served with the Landlord's documentary evidence.

Issue to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments

relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on July 1, 2021 and ended on February 20, 2022. Rent was \$1,550.00 per month. The Tenant paid a security deposit of \$600.00.

The Tenant submitted that she did not have hot water in the rental unit from December 28, 2021 to the end of January 2022. According to the Tenant, she was required to stay with her parents for 20 days and commute to work (a distance of 107 km), which resulted in fuel costs of \$2,400.00. The Tenant stated that she also stayed five days with her employer, and two nights at a motel (\$110.00 per night). The Tenant explained that daily showers were important due to the nature of her occupation. The Tenant stated that the Landlord was going to cover two nights in a hotel for the Tenant and reduce next month's rent by \$200.00, but failed to compensate the Tenant at all.

According to the Tenant's monetary order worksheet and written submissions, the Tenant claims the following amounts:

Item	Amount
Motel Stay (\$110.00 per night × 2 nights)	\$220.00
Fuel Expenses (\$60.00 × 2 trips per day × 20 days)	\$2,400.00
Rent Reduction (agreed to by Landlord)	\$200.00
Total	\$2,820.00

The Tenant submitted text and email correspondence between the parties, as well as statements from her family members and friend TS. According to TS's statement, TS paid for the Tenant's motel stay because the Tenant did not have a credit card.

The Landlord denied that the Tenant did not have hot water from December 28, 2021 to the end of January 2022. The Landlord explained that she received a text message from the Tenant on December 28, 2021 about no water due to the pipes possibly being frozen. The Landlord stated that she went to check on the rental unit and got cold water running by the next day. The Landlord stated that the hot water was still not working, so she hired a plumber who fixed the issue by December 30, 2021. The Landlord submitted the parties' text message correspondence into evidence.

The Landlord stated that things were fine until January 6, 2022, when a fire occurred in the hot water tank room. The Landlord explained that the rental unit is an old house with

a separate room for the hot water tank accessed through the backyard. The Landlord stated that she had a plumber attend the same day to assess the damage. The Landlord submitted pictures of the fire damage into evidence. The Landlord stated that the water tank was broken and needed to be replaced. The Landlord explained that she thought she could take the chance to switch to a better water system. The Landlord stated that she arranged to have the new system set up on January 17, 2022. The Landlord stated that this never happened because on January 14, 2022, there was another fire in the rental unit, this time in the crawlspace below the house.

The Landlord stated that she discussed with her plumber, who advised not to install the newer water system due to the fires. The Landlord stated that to meet her obligations, she had another hot water tank installed on January 17, 2022, and both hot water and cold water were running again. The Landlord submitted a plumbing invoice dated January 23, 2022 into evidence.

The Landlord stated that she initially gave the Tenant the benefit of the doubt regarding the fire in the hot water tank room. The Landlord explained she realized the fires were related to the Tenant after seeing the pictures for the crawlspace fire. The Landlord stated the Tenant had told the fire department that the fire was caused by a heater in the crawlspace. The Landlord stated that pictures show the fire damage was at the entrance of the crawlspace, while the heaters were sitting deep in the back and were undamaged. The Landlord submitted the pictures into evidence. The Landlord also referred to text messages from the Tenant dated January 14, 2022 in which the Tenant acknowledged having moved the heaters around and suggested that it might have been her fault.

The Landlord stated that there was also a suspicious fire back in July 2021. The Landlord referred to records and incidents reports obtained from the fire department on January 18, 2022 submitted into evidence. These documents show that the fire department recorded 12 incidents during the eight-month tenancy. The Landlord stated that she did not know the fire department had attended so many times. The Landlord submitted email correspondence from a neighbour, MJ, who noted that the attendances from the fire department and the police seem to be a “regular thing”.

According to the Landlord’s written submissions, the Tenant was later found guilty of setting the rental unit on fire in July 2021. The Landlord submitted screenshots of court records indicating that the Tenant was charged with “arson by negligence” on July 16,

2021. The court records submitted further suggest that the Tenant was found guilty following trial on June 29, 2022.

The Landlord summarized the lack of water in the rental unit as follows:

- The Tenant did not have water on December 28, 2021 due to frozen pipes
- There was no hot water from January 6 to 14, 2022 after the fire in the hot water tank room, which was likely caused by the Tenant
- There was no water from January 14 to 17, 2022, after the fire in the crawlspace

The Landlord questioned whether the Tenant had in fact resided with her parents for 20 days. The Landlord argued that based on the parties' text message record, it was clear the Tenant was at the rental unit on many days, including when the fires happened. The Landlord stated that the neighbours had reported the Tenant multiple times for making noise, which was also proof that the Tenant was at the rental unit instead of at her parents'. The Landlord submitted email complaints regarding noise incidents noted on December 29, 2021 and January 21, 2022.

The Landlord stated that she was still fine with giving the Tenant a \$200.00 rent reduction and \$110.00 off for no showers. The Landlord stated that she was going to deduct those amounts off rent for February 2022, but the Tenant never paid February 2022 rent.

The Landlord issued the Tenant a 10 day notice to end tenancy for unpaid rent in February 2022. The Tenant, through the assistance of KS, negotiated a mutual agreement to end tenancy (the "Mutual Agreement") signed by both parties which confirms that the tenancy will be ended February 20, 2022. According to email correspondence between the Landlord and KS, the parties further agreed that by signing the Mutual Agreement, the parties will no longer have contact with each other by phone, text or email as of February 20, 2022, and the Landlord will keep the \$600.00 security deposit towards cleaning and repairs.

The Landlord explained that she thought by signing the Mutual Agreement, the parties were done with each other. The Landlord stated that the Tenant left unpaid electricity and gas utilities, an unpaid bylaw violation ticket for noise, garbage, and damage to the rental unit which she had to repair. The Landlord submitted supporting invoices, receipts, and pictures into evidence. The Landlord stated that she was unable to re-rent the rental unit for two months after the Tenant moved out. The Landlord stated that she

was just glad to have the Tenant out of her life and did not claim against the Tenant for monetary loss.

KS and the Tenant argued that the fire in the crawlspace was caused by space heaters. KS submitted that the water was not running on January 17, 2022 based on the parties' text message correspondence. KS argued that the Tenant's belongings were at the rental unit and the Tenant was still accessing the rental unit to retrieve her belongings. KS stated that the Tenant was not offered a hotel room by emergency services.

Analysis

In this case, the Tenant claims compensation for \$220.00 in motel stays, \$2,400.00 in fuel costs, and \$200.00 in rent reduction agreed to by the Landlord.

As a preliminary matter, I note the Landlord raised the issue of whether the parties could claim against each other despite having signed the Mutual Agreement. I find the Mutual Agreement to be in the standard Residential Tenancy Branch form, which contains the usual preamble with the phrase "the tenancy will end with no further obligation" between the parties. I find this wording does not amount to a release of any claims that a party may have against the other, but merely confirms that the tenancy and the parties' obligations thereunder will be ending on a specified date and time. I find the Mutual Agreement is not an entire agreement between the parties, as they further agreed to a no-contact term and a term regarding the security deposit via email. However, I find the wording of these terms also do not go so far to say that the parties agree to mutually release each other of any claims or liability in respect of the tenancy. Therefore, I do not find the Mutual Agreement or the parties' agreement via email to bar either of them from making any claims against the other subject to the usual time limits under the Act.

As a secondary matter, I note the Tenant increased the total amount of compensation claimed since the application was made, without filing an amendment form prior to the hearing. However, I find the Landlord was fully prepared to address the substance of each of the Tenant's claims. As such, I find these claims were reasonably anticipated by the Landlord. Pursuant to Rule 4.2 of the Residential Tenancy Branch Rules of Procedure, I allowed the Tenant to increase the amount of her claim from \$2,325.00 to \$2,820.00.

I will now address the claims for compensation made by the Tenant.

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62(3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In addition, Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss states:

C. COMPENSATION

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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Based on the evidence presented, I am not satisfied on a balance of probabilities that the Tenant had suffered any damage or loss due to a failure on the part of the Landlord to comply with the Act, the regulation, or the parties' tenancy agreement.

First, I accept the Landlord's testimony that the water issues due to frozen pipes in December 2021 were resolved within approximately two days. I find that this situation, while inconvenient, is not sufficiently serious to amount to a breach of quiet enjoyment warranting compensation under section 67 of the Act. I accept that access to water in the rental unit was affected in January 2022 for approximately two weeks, due to a fire that damaged the hot water tank on or around January 5, 2022 and a fire in the crawlspace on or around January 14, 2022. However, I am not satisfied on a balance of

probabilities that these fires had occurred due to reasons unrelated to the Tenant. I find the evidence regarding space heaters being the cause of both fires to be unclear. Given the history of fire incidents at the rental unit and the Tenant's text messages dated January 14, 2022 suggesting that it could have been her fault, I find it is equally possible that the fires occurred due to the actions or neglect of the Tenant. Under these circumstances, I am unable to conclude that any losses suffered by the Tenant due to a lack of water or hot water in the rental unit can be attributed to a failure or breach by the Landlord.

Second, I find the Tenant has not provided sufficient evidence to prove the amount of her losses due to lack of water in the rental unit. I find the Tenant did not submit any receipts for a motel stay, which should have been available even if paid for by TS. I find the Tenant's evidence to lack particulars such as the dates on which she claims to have commuted to work from her parents' residence. I find the Tenant also did not submit any receipts for purchasing fuel. Therefore, I am not satisfied that the Tenant had in fact incurred fuel expenses of \$2,400.00 from December 28, 2021 to the end of January 31, 2022. I note that even if the Tenant had substantiated her fuel costs with receipts, I would not find the Tenant to have acted reasonably to minimize her loss. For example, I find that based on the Tenant's evidence, staying at a motel for \$110.00 per night would have been more cost effective than incurring \$120.00 in roundtrip fuel costs per day.

Third, I find the Landlord nevertheless offered the Tenant a \$200.00 rent reduction and \$110.00 compensation to be taken off rent payable for February 2022. I find the Tenant's email and text message to the Landlord dated January 20, 2022 both acknowledge this offer. I accept the Landlord's evidence that the Tenant did not pay any rent for February 2022. As such, I find the Tenant already received the \$200.00 rent reduction and the \$110.00 compensation from the Landlord in full. I find there is no basis for the Landlord to pay another \$200.00 to the Tenant as claimed in this application.

For the above reasons, I conclude the Tenant is not entitled to compensation from the Landlord under section 67 of the Act.

Conclusion

The Tenant's application is dismissed without leave to re-apply.

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 24, 2023

Residential Tenancy Branch