



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

On July 27, 2022, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for money owed or compensation for damage or loss and for the Landlord to return of all or part of the pet damage deposit or security deposit, and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. The Tenant and Landlord appeared at the hearing.

The hearing process was explained, and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided.

- is the Tenant entitled to compensation for damage or loss?
- is the Tenant entitled to the return of the security deposit and or pet damage deposit?

Background and Evidence

The Tenant and Landlord testified that the tenancy began on July 4, 2022, as a fixed term tenancy ending on July 11, 2022. The short-term lease agreement provides that

rent for this booking in the amount of \$5,250.00 is due on or before July 4, 2022. The tenant paid a security deposit of \$1,500.00.

The lease agreement provides that if there is a conflict between any provision of this Lease and the Act, the Act will prevail, and such provisions of the Lease will be amended or deleted as necessary in order to comply with the Act. Further, any provisions that are required by the Act are incorporated into the Lease.

Compensation for Damage or Loss

The Tenant reduced the claim amount to \$1,000.00. The Tenant is seeking compensation from the Landlord because the Landlord did not comply with the tenancy agreement by providing the key and full access to the rental unit at 12:00 pm on July 4, 2022. The Tenant testified that the tenancy agreement states that occupancy is at 3:00 pm; however, an oral agreement was reached with Ms. S.S. that the key would be provided to the Tenant at 12:00 pm.

The Tenant testified that the Landlord did not give her the key until 5:30 pm and as a result a decorator who was scheduled to decorate the house for a wedding, had to return to the house later in the day and subsequently charged the Tenant an additional \$500.00 to decorate.

The Tenant testified that they awoke on July 7th and noticed the refrigerator was not working. The Tenant testified that food in the refrigerator had spoiled and was disposed of. The Tenant is seeking compensation for the value of spoiled food.

The Tenant did not provide receipts for the extra cost of the decorators or pictures of spoiled food or receipts for the replacement cost of spoiled food.

In reply, the Landlord acknowledged that the tenancy agreement states the Tenant would have the key to the unit at 3:00 pm. The Landlord stated that the tenant received the key at 5:30 pm and the 2.5-hour delay was due to the Landlord still preparing the unit. The Landlord stated that the tenant had access to the unit prior to 5:30 while the Landlord was still preparing.

The Tenants stated that the decorators that were hired were only decorating inside the house. The Tenants relative who attended the unit was told by the Landlord that the unit was not ready yet, and waited outside until it was ready.

The Landlord stated that the Tenant was given access to a refrigerator/ freezer and that the Tenant said OK.

Security Deposit

The Tenant is seeking the return of a \$1,500.00 security deposit. The Tenant testified that the Landlord did not return the \$1,500.00 security deposit to her after the tenancy ended. The Tenant testified that there was no written agreement made at the end of the tenancy that the Landlord could retain an amount of the security deposit.

The Tenant testified that she did not provide the Landlord with her forwarding address in writing at the end of the tenancy.

In reply, the Landlord confirmed that they are still holding the security deposit. The Landlord stated that the Tenant did not provide a forwarding address in writing at the end of the tenancy.

Analysis

Section 5(1) of the Act provides that landlords and tenants may not avoid or contract out of this Act or the regulations. Any attempt to avoid or contract out of the Act or the regulations is of no effect.

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

I find that the Landlord breached the tenancy agreement by failing to provide the Tenant with the key to the rental unit in accordance with their tenancy agreement. I find that the rental unit was not ready for occupation at 3:00 pm.

I also find that the refrigerator used by the Tenant stopped working. The Landlord is responsible to maintain appliances in the rental unit and is responsible for any loss that occurred.

While the Tenant has established that there was a breach of the agreement, the Tenant failed to provide proof of the actual amount that is required to be compensated for the loss. The Tenant failed to provide documentary evidence of an invoice showing that she paid the decorators \$500.00 and did not provide photographs of spoiled food or receipts for the replacement cost of food.

An arbitrator may award compensation in situations where establishing the value of the damage or loss is not as straightforward. "Nominal damages" are a minimal award and may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I award the Tenant nominal damages of \$100.00 for the Landlords breach of not providing the key to the rental unit and for the Landlords' responsibility regarding the refrigerator.

Security deposit

Section 38 (1) of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the Tenant's application for the return of the security deposit is premature because the Tenant did not provide a forwarding address and the Landlord did not have an opportunity to return it or make a claim against it. The Landlord now has the Tenants address and has 15 days from the date of this decision to return the deposit or file for dispute resolution and claim against it.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

The Tenant is granted a monetary order in the amount of \$200.00.

Conclusion

The Landlord breached the tenancy agreement by not providing the key to the rental unit to the Tenant as agreed in the tenancy agreement and for the Landlords' responsibility regarding a malfunctioning refrigerator.

I award the Tenant nominal damages of \$100.00 for the Landlords breach and \$100.00 for the cost of the filing fee.

The Tenant is granted a monetary order in the amount of \$200.00.

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: April 26, 2023

Residential Tenancy Branch