



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding REMAX COMMERCIAL SOLUTIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code MNDCT (x3), MNSD (x1), FFT (x1)

Introduction

This hearing was scheduled pursuant to three Applications for Review Consideration, made on December 23 and 28, 2022, and on July 19, 2023. In the applications, the Tenant applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order granting compensation for monetary loss or other money owed;
- an order granting the return of the security deposit; and
- an order granting the filing fee.

The Tenant attended the hearing on his own behalf. The Landlord was represented at the hearing by MJ, an agent. Both the Tenant and MJ provided a solemn affirmation at the beginning of the hearing.

The Tenant testified the Notice of Dispute Resolution Proceeding packages relating to the three applications were served on the Landlord by leaving copies at the office. MJ acknowledged receipt of these documents.

On behalf of the Landlord, MJ testified the documentary evidence to be relied upon with respect to the three applications was served on the Tenant by registered mail. The Tenant acknowledged receipt of these documents.

No issues were raised with respect to service or receipt of these documents during the hearing. The parties were in attendance and were prepared to proceed. Pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form as appropriate, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an order granting compensation for monetary loss or other money owed?
2. Is the Tenant entitled to the return of the security deposit?
3. Is the Tenant entitled to an order granting the filing fee?

Background and Evidence

The parties agreed the tenancy began on September 1, 2021, and ended on November 30, 2022. Rent of \$1,179.75 per month was due on the first day of each month, although there was disagreement about an additional parking fee of \$25.00 per month. The parties agreed the Tenant paid a security deposit of \$575.00, and that the Landlord returned \$475.00 to the Tenant and retained \$100.00.

With respect to the application made on December 23, 2022, the Tenant seeks \$1,179.25 for the Landlord's failure to address harassment by another tenant in the rental property, contrary to section 28 of the Act. The Tenant testified that one evening when he returned home, another tenant in the rental property was waiting for him. The Tenant testified the individual made "wild accusations", threatening remarks, and swore at the Tenant.

The Tenant submitted a video of the incident in support. It shows the Tenant entering a building and being confronted by another individual about the Tenant allegedly slamming door and otherwise being disrespectful. The Tenant can be heard stating his behaviour is the result of more than two years of poor treatment from other tenants. The Tenant testified that he advised the Landlord about the incident but that nothing was done.

On behalf of the Landlord, MJ testified that she spoke to the other tenant and told him to stop the behaviour.

With respect to the application made on December 28, 2022, the Tenant seeks \$3,655.00 as reimbursement of personal items left at the rental property. The Tenant acknowledged these were returned in March 2023.

In reply, MJ testified that the items were made available earlier but that the Tenant did not pick them up. The Tenant acknowledged they were available but said he was homeless due to being evicted and had nowhere to keep them.

The Tenant also claimed \$1,050.00 for the return of the security deposit. The Tenant testified that he gave the Landlord a forwarding address in writing on December 5, 2022. A copy of the text message was submitted in support. The Tenant confirmed that he received a cheque for \$475.00 on February 6, 2023.

In reply, MJ testified that the Landlord sent the security deposit to the Tenant within 15 days after receiving the forwarding address. However, the correspondence kept getting returned to the Landlord. According to MJ, an RCMP officer advised that the address provided by the Tenant is a mall where the Tenant was employed, not a residential address. MJ denied the Landlord withheld the security deposit, noting that \$475.00 was returned to the Tenant in accordance with an arbitrator's decision dated November 8, 2022. The file number of the related proceeding is included above for ease of reference.

With respect to the application made on July 19, 2023, the Tenant seeks to recover storage costs totalling \$2,734.89 for the period from December 2022 to July 2023. The Tenant advised he had nowhere to go after being evicted and was homeless. The Tenant submitted he is entitled to these amounts because a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) issued by the Landlord contravened the Act. The parties acknowledged the 10 Day Notice was upheld in the decision issued on November 8, 2022, and that the Landlord was granted an order of possession.

In reply, MJ referred to the decision in which the arbitrator stated: "I disagree [with the Tenant] that any error in the amount of rent owing on the Notice renders it ineffective." Nevertheless, the Tenant maintained the Landlord contravened the Act.

The Tenant also requested rent for June and November. The Tenant testified the issue goes back to his request for a second parking stall in May 2022. The Tenant was given a stall and, to his surprise, was asked to pay an additional \$25.00 per month. The Tenant testified that the 10 Day Notice referred to above wrongly included the unexpected parking fee. The Tenant testified he is seeking a rent reimbursement for the manner in which the Landlord tried to increase rent contrary to the Act.

In reply, MJ submitted that the issue was a mistake and was addressed in the decision referred to above.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the Act empowers the director to order one party to pay compensation to the other if damage or loss results from a party not complying with the Act, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the Act. An applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss because of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Tenant's claim for \$1,179.25 for harassment experienced by the Tenant, section 28 of the Act protects a tenant's right to quiet enjoyment. Policy Guideline #6 states:

...quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

In this case, I find that the Tenant's request for compensation for harassment by other tenants cannot succeed. I find there is insufficient evidence before me to conclude that the interference was substantial. Although audibly agitated, both the Tenant and the other individual remained composed. The incident did not become physical. I also accept the Landlord took reasonable steps by speaking with the other individual involved. No further video examples of poor treatment were referred to by the Tenant. This aspect of the Tenant's application is dismissed.

With respect to the Tenant's claim for \$3,655.00 as reimbursement of personal items left at the rental property, I find there is insufficient evidence before me to grant the relief sought. The Tenant confirmed he moved out on November 30, 2022. He testified he left his belongings there because he did not have anywhere to move them after being evicted. I accept the testimony of MJ who advised that the items were always available for pick-up but that the Tenant did not collect them. This aspect of the Tenant's application is dismissed.

With respect to the Tenant's claim for \$1,050.00 for the return of the security deposit, section 38(1) of the Act requires a landlord to repay deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the Act confirms the tenant is entitled to the return of double the amount of the deposits. The language in the Act is mandatory.

In this case, I accept that the Tenant provided the Landlord with a forwarding address in writing on February 6, 2023. I also accept the testimony of MJ who testified that the Landlord attempted to mail the balance of the security deposit to the Tenant but that it was returned. I also accept that \$475.00 was returned to the Tenant in accordance with the decision dated November 8, 2022. Considering the above, I find that this aspect of the Tenant's application is dismissed.

With respect to the Tenant's claim for recover storage costs from December 2022 to July 2023, I find there is insufficient evidence before me to grant the relief sought. Rather, I accept that the 10 Day Notice was upheld, and that the Landlord was granted an order of possession. I accept that the Tenant vacated the rental unit on November 30, 2022, in accordance with the order of possession. I do not accept the Tenant's assertion that the notice to end tenancy contravened the Act, with the result that the Landlord must now reimburse storage costs incurred by the Tenant. This aspect of the Tenant's applications is dismissed.

With respect to the Tenant's claim for a refund of rent for the months of June and November 2023, I find there is insufficient evidence before me to grant the relief sought. Although the Tenant asserts some wrongdoing on the part of the Landlord, the 10 Day Notice referred to by the Tenant was upheld in the decision dated November 8, 2022. It is not within my delegated power to find the 10 Day Notice did not comply with the Act as that decision was made by a previous arbitrator. This aspect of the Tenant's applications is dismissed.

With respect to the Tenant's request to recover a \$100.00 filing fee paid in relation to the application made on July 19, 2023, I find the Tenant has not been successful and is not entitled to recover the filing fee. This aspect of the Tenant's application is dismissed.

Conclusion

The Tenant's applications referred to above are dismissed 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: September 19, 2023

Residential Tenancy Branch