



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Preliminary issues

At the outset of the hearing the tenant advised that she wished to amend her application and reduce the amount sought. After reviewing the documentation with the tenant she requested to remove the issue of the deposit and the doubling provision as the matter had been adjudicated in another hearing, as well reduce the amount of her claim for filing fees. The tenant originally sought a monetary order of \$12609.19 but now seeks a monetary order of \$10,086.89. The landlord did not oppose the amendment. Pursuant to section 64(3)(c) of the Act the tenants application was amended as noted.

Issue to be Decided

Are the tenants entitled to a monetary award for losses arising out of this tenancy?
Are the tenants entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenant's testimony is as follows. The tenancy began on August 1, 2015 and ended on August 4, 2016. The tenants were obligated to pay \$2000.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1000.00 security deposit and \$1000.00 pet deposit. The tenant testified that they had verbally agreed to allow the landlords to move into the property for three weeks commencing August 5, 2016 until August 26, 2016. The tenant testified that part of that agreement was that the tenants move out for that time and find alternative housing. The tenant testified that she did this because "we're nice people". The tenant testified that the landlords had promised her that she could move back in after the three weeks and that they could commence another fix term tenancy. The tenant testified that on August 22, 2016 the landlords advised her that they had changed their minds and that she had to pick up all of her belongings.

The tenant testified that the landlords withheld many of the personal items and that the items that they did return were damaged. The tenant testified that she seeks \$10,086.89 for renting a moving truck, alternative accommodations, gas for the moving truck, storage locker and lock, change of address cost, loss of wages, replacement of many kitchen and personal items, compensation for moving and the cost of utilities from August 5-26, 2016.

The tenants are applying for the following:

1.	In Lieu of Proper Notice	\$2000.00
2.	Ramada hotel	583.05
3.	Joey Thompson -alt accommodations	1750.00
4.	Tracy Sampson -alt accommodations	2625.00
5.	Higher rental rate October, 2016 – December 2016	1470.00
6.	Filing Fees	100.00
7.	U-haul	85.00
8.	Gas	40.00
9.	Budget storage locker	58.85
10.	Storage locker lock	14.51
11.	Canada post	55.60
12.	Sherlock Clothing	438.46
13.	Tablet	149.99
14.	Walmart	175.00
15.	Itemized list	285.00
16.	Fortis BC	70.80
17.	Shaw	121.03
18.	City of Kelowna	64.60
	Total	\$10086.89

The landlords gave the following testimony. LC testified that the tenancy was a fixed term tenancy that required the tenants to vacate on July 31, 2016. LC testified that she resides in Newfoundland and that the first available flight to the subject property was on August 3, 2016. LC testified that she advised the tenants that it was no problem for them to stay a few extra days. LC testified that the home was in very poor condition when it was returned to them and that she was disappointed in how the tenants failed to maintain it. LC testified that the tenants were upset that they did not want to sign a new fixed term tenancy. LC testified that the tenants were fully aware that the tenancy had the move out clause. LC testified that the tenants advised her that they were going to buy a home and only needed a place for the one year.

LC testified that she offered a month to month tenancy but at a higher rate to give the tenants a little more flexibility until they bought a home but was refused by the tenants. TC testified that there was never any deception or deceit on the part of the landlords and that they were very clear from the outset that the tenancy would be for one year only. LC testified that because of this situation they have not rented out the home as it left them emotionally scarred. LC testified that this is the fifth hearing that they've had and that she's emotionally spent from the anxiety of the process. LC testified that all items were returned to the tenant and that she had no interest in keeping any of her belongings. LC advised she has no issue with paying the \$256.43 for utilities but feels the remainder of the claim should be dismissed.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

As explained to the parties during the hearing, **the onus or burden of proof is on the party making the claim**. In this case, **the tenant must prove their claim**. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. I note that neither party provided a copy of the tenancy agreement. The tenant continually referred to an email correspondence with the landlord that she alleges would prove her claim; however, she did not submit it for this hearing. The tenant made reference to a review hearing numerous times that she felt supported her

position that the tenancy was ongoing. I have reviewed that decision and the Arbitrator noted as follows in their analysis:

“At the hearing I was presented with two different versions of the tenancy agreement. I was provided with photocopies of those agreements. I was not able to inspect the original documents. In the original September 27, 2016 decision the arbitrator did not consider contradictory evidence as to the authenticity of the two different versions of the tenancy agreement. I make no finding in this decision as to which version of the tenancy agreement submitted as evidence is the true or authentic agreement.”

LC was clear, concise and credible when providing testimony. LC testified “I don’t know how many ways I can say that the lease was up on July 31, 2016 and that they had to move out”. Although exasperated, the point was made. Both LC and TC gave direct and clear testimony and submit that the costs incurred by the tenant are costs she would have to bear by moving out at the end of the agreed term anyway. Based on the lack of documentation before me, the testimony of the parties, and on a balance of probabilities, I prefer the version of the events as purported by the landlord.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

As I have found that the tenancy was a fixed term tenancy that ended on July 31, 2017 with the requirement for the tenants to move out as the tenant has failed to provide sufficient evidence to show that the tenancy was ongoing, I dismiss her claims for the compensation to move, the hotel stay, alternative renting costs, moving truck and gas, storage locker and lock, postal fees, and loss of wages as these were all costs that she had to incur as a result of the fix term tenancy ending; these are not costs that I attribute as a result of the landlords reckless or negligent actions or any contraventions of the *Act*.

As for the personal items, Lego set and tablet, the tenant advised that she has not replaced some of the items, but in any event has not provided any receipts to show the

actual loss incurred. As a result, the tenant has failed to show the actual amount of loss as required under section 67 of the Act and I dismiss that portion of her claim.

As the landlord agreed to the utilities cost, I find that the tenants are entitled to \$256.43. As the majority of the tenants claim has been dismissed the tenants must bear the cost of the filing fee.

Conclusion

The tenant has established a claim for \$256.43. I grant the tenant an order under section 67 for the balance due of \$256.43. This order may be filed in the Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 3, 2017

Residential Tenancy Branch