



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 16 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she served the landlord with the tenant's application for dispute resolution hearing package on September 25, 2019, by way of registered mail to the service address provided by the landlord in the tenancy agreement. The tenant provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application on September 30, 2019, five days after its registered mailing.

Issues to be Decided

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

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

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the tenant's documentary evidence and the testimony of the tenant, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant testified regarding the following facts. This tenancy began on September 15, 2018 and ended on August 30, 2019. Monthly rent in the amount of \$2,200.00 was payable on the first day of each month. A security deposit of \$1,100.00 and a pet damage deposit of \$1,100.00 were paid by the tenant and the landlord returned the \$1,100.00 pet damage deposit to the tenant, while retaining the full security deposit of \$1,100.00. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. Move-in and move-out condition inspection reports were not completed for this tenancy. The tenant provided a written forwarding address by way of mailing a letter to the landlord on September 6, 2019. The tenant also provided a text message with the forwarding address on September 3, 2019. The tenant did not receive an application for dispute resolution from the landlord to retain the tenant's security deposit. The landlord did not have permission to keep the tenant's security deposit.

The tenant seeks a return of her security deposit of \$1,100.00 plus the \$100.00 application filing fee. The tenant also seeks \$45.00 for having to pay interest on her credit line in order to take out money to pay for a security deposit for the new unit that she moved into. She maintained that she did not provide proof of this cost. She said that the rental unit was not habitable, so she was required to move. She stated in her application "that the house was filled with black mold due to the pipes breaking and the crawl space not being cleaned up with professional grade cleaners." The tenant claimed that she did not provide the landlord with a breach of a material term letter and provide him with a reasonable period of time to correct the breach, before moving out. She said that she had text messages, alerting the landlord to the breach, but she did not provide it for this hearing.

The tenant also seeks \$500.00 for moving costs. She agreed that she did not provide proof of same. She said that the hot water tank inside the rental unit was not working for eight months. She maintained that she was required to move out.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

On a balance of probabilities, I make the following findings based on the undisputed testimony and written evidence of the tenant. The tenancy ended on August 30, 2019. The tenant provided a written forwarding address to the landlord by way of a letter that was sent by regular mail, as allowed by section 88 of the *Act*, to the landlord on September 6, 2019. I find this letter was deemed received by the landlord on September 11, 2019, five days after the mailing as per section 90 of the *Act*. I find that the tenant did not give the landlord written permission to retain any amount from her security deposit. The landlord did not return the security deposit or make an application for dispute resolution to claim against the deposit within 15 days of September 11, 2019, the later forwarding address date.

The landlord continues to hold the tenant's security deposit of \$1,100.00. No interest is payable on the deposit during the period of this tenancy. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of her security deposit of \$1,100.00, totaling \$2,200.00.

Although the tenant did not apply for double the value of the deposit, she is not required to, as per Residential Tenancy Policy Guideline 17. As long as the tenant does not waive her right to obtain double, which she did not, at the hearing, I find that she is entitled to double.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant 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 landlord in violation of the *Act*, *Regulation* or tenancy agreement;

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for \$545.00, without leave to reapply. I find that the tenant was unable to justify the \$545.00 amount being claimed. I find that the tenant failed the above test. I find that the tenant failed to provide proof of the above amount, by way of invoices, receipt, or estimates. I also find that the tenant did not provide a breach of material term letter, notifying the landlord of the issue and allowing him time to correct it, before moving out. The tenant did not provide copies of text messages that she said she sent to the landlord. Therefore, I find that the tenant did not prove that the rental unit was uninhabitable, that she was required to move, or that the landlord was responsible for her moving costs. I find that the tenant is not entitled to her moving costs of \$500.00 or her credit line interest of \$45.00.

As the tenant was partially successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$2,300.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: January 23, 2020