



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on October 27, 2022 seeking the Landlord's compliance with the legislation and/or tenancy agreement, and reimbursement of the Application filing fee.

On February 1, 2023 the Tenant amended their Application to claim compensation for monetary loss or other money owed.

The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on March 6, 2023. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

Preliminary Matter – Tenant's service of evidence to the Landlord

I find the Tenant provided their evidence to the Landlord as required in this matter. The Landlord stated they could not see provided pictures clearly, and they received no video. In response to the evidence provided with the Tenant's amendment, the Landlord stated they could not see the contents of the more recent additional evidence clearly, due to "very small letters".

Preliminary Matter – Landlord's service of evidence to the Tenant and the Residential Tenancy Branch

The Tenant acknowledged that they received evidence from the Landlord in this matter. This was via registered mail as the Landlord showed by the receipt they provided to the Residential Tenancy Branch.

The Landlord did not provide evidence to the Residential Tenancy Branch for this particular hearing. For the purposes of this decision, I rely on the Landlord's testimony from the hearing. This is a form of evidence that receives full consideration and I weigh their statements against the evidence and testimony of the Tenant to make findings of fact herein.

Preliminary Matter – tenancy ended

The Tenant stated in the hearing that they moved out of the rental unit in "mid-November" 2022.

Given that the tenancy has already ended, there is no ongoing landlord-tenant relationship. The Landlord's compliance with the *Act* or the tenancy agreement is no longer in issue and cannot be rectified. I dismiss this piece of the Tenant's Application without leave to reapply.

Preliminary Matter – Landlord's separate Application for Dispute Resolution

The Landlord presented that they filed their own Application at the Residential Tenancy Branch, claiming compensation from the Tenant concerning this tenancy. This involves the security deposit and pet damage deposit the Landlord continues to hold after this tenancy ended on October 31, 2022. The parties in this hearing could not agree on the deposit amounts paid by the Tenant at the start of this tenancy, with the Tenant presenting that an extra amount of rent they paid in advance was another deposit.

That separate hearing is scheduled for September 2023. I decline to join that matter to this present Application of the Tenant, with no evidence presented by the Landlord for this present Application. The Landlord's claim separately involves the security deposit; therefore, I dismiss the Tenant's claim for the return of the security deposit in this present matter and that will be the subject of the upcoming hearing.

Issues to be Decided

Is the Landlord obligated to comply with the legislation and/or the tenancy agreement?

Is the Tenant entitled to compensation for monetary loss/other money owed, pursuant to s. 67 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant provided a copy of the tenancy agreement that was in place with their Landlord. The tenancy started on October 1, 2022 for a fixed term ending on September 30, 2023. The agreement was for the Tenant to pay a rent of \$1,700 each month.

The Tenant recalled that they moved into the rental unit on October 4, 2022; their move out from the rental unit was on November 4, 2022. The Tenant stated they did not return the key to the Landlord.

The Landlord recalled the Tenant making many demands when they moved in. The Landlord described doing their best they could to accommodate the Tenant's requests; however, on October 25 or 26 the Tenant notified the Landlord that they wished to end the tenancy. On October 27 the Landlord started to advertise the availability of the rental unit for prospective new tenants and started a new separate tenancy on December 1, 2022.

The Tenant inadvertently left their family member's backpack in the rental unit. They returned to the rental unit that had locks changed after they had moved out. The Landlord did not respond to their calls. At this time, the upstairs residents at the rental unit property informed the Tenant that someone else had moved in to the rental unit. The Tenant then talked to the new tenants in the rental unit, who informed the Tenant that they had moved in on November 15, 2022.

The Tenant described a missing iPad and another electronic tablet, as well as "other miscellaneous stuff". In their amended Application, the Tenant provided the amount of \$1,170.19 as the value of these items.

The Landlord provided a receipt from an electronics shop from Hong Kong dated October 1, 2022. This lists the price of an apple iPad as 2,499 HKD – *i.e.*, Hong Kong dollars. Another separate receipt shows a payment of \$1,539 HKD on October 2, 2022 for a Samsung tablet.

The Landlord noted the Tenant moved out at the end of October 2022 and "refused to return the key and fob". This left the Landlord no choice but to replace the lock at the rental unit so the Tenant could not enter. The Landlord had new tenants from December 1; however, those new tenants moved items into the rental unit in mid-November. The Landlord stated they did

not know about a backpack left in the rental unit; the Tenant did not speak to the Landlord about this previously.

The Tenant also described mould existing in the rental unit and provided pictures of this in their evidence. This caused ill health in their children, and the Tenant's suspicion of this as stemming from the mould issue was confirmed when their children stayed with friends that alleviated symptoms that included weakness. In a phone consultation with a doctor, that doctor confirmed mould would be inside the air. The Tenant presented a doctor's note dated October 27 that states "sneezing and runny nose in past 2-3 weeks" and "the building is full of mould". The diagnosis was "allergic rhinitis" and the doctor advised to "change location" and "avoid allergen." The doctor prescribed a nasal spray and basic allergy relief medication. For this medical appointment, the Tenant paid \$111.12 that they are claiming for reimbursement, in addition to the \$42.47 they paid for their child's medication.

The Landlord in the hearing presented that they did not know about this issue. From the Tenant's pictures, the Landlord described only a little dirt visible in the picture. They also noted they paid around \$3,000 to have the rental unit painted prior to the start of this tenancy.

The Tenant also presented that the stove in the rental unit was not working. They showed this in an image of oil dripping from the range hood, as well as a short video to show that the light in the range hood did not work. In the hearing the Tenant described having to eat out for this reason.

The Landlord noted a technician visited to inspect the stovetop that had a non-working single burner. This tech reported the matter as "all good" after their visit. The Tenant's evidence shows a message to the Landlord on October 13 about a visit for this purpose.

The Tenant added their receipts for eating out, a supermarket receipt, and provided the total amount of \$634.68 as "damaged food" partially due to a malfunctioning refrigerator. The Tenant did not add the receipts up or otherwise show how they came to this amount.

The amounts listed above total \$1,958.46.

Analysis

A party that makes an application for 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 in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I find on each of the items the Tenant has not overcome the burden of proof. Applying the four points listed above, I find:

- In an effort at minimizing loss, the Tenant did not present that they inquired on the missing electronic devices with new tenants and neighbours after their move out. More importantly, I am not satisfied the Tenant notified the Landlord that personal items were left behind in the rental unit.

Despite this, I order the Landlord to return any personal property left behind in the rental unit by the Tenant after they vacated the rental unit in early November. The Tenant must illustrate their efforts at communication, and the Landlord must respond in kind setting out their efforts at locating any personal items left behind by the Tenants. Each party must undertake efforts to locate the items prior to any compensation for these items. On this, I accept the Landlord's statement that they were previously unaware of these devices, and the Tenant did not show their efforts at contacting the Landlord to discuss.

- I find the Tenant did not definitively link the presence of mould in the rental unit with the need for their child to visit the doctor and require medication. The presence of mould is not independently proven, and to prove a health impact, that must be in place. Unfortunately, photos do not depict this accurately, and I am not satisfied of the presence of mould to a sufficient degree that would affect the Tenant's family member's health. There is nothing to distinguish symptoms presented from seasonal allergies or a

cold. I do note as well the Tenant travelled from a different continent prior to moving into the rental unit. In short, there are numerous other possibilities and the presence of mould in the rental unit was not independently verified.

- The Tenant did not show, with an abundance of evidence, that they needed to eat out, or their purchased food was otherwise spoiled. The Tenant really only pointed to a range hood without a light and oil dripping from that appliance. This is not enough evidence to show the need to eat out during this time, aside from some inconvenience. I am not satisfied of the Tenant being completely prevented from preparing food in the rental unit; indeed, the video they provided shows a full use of the stovetop without any apparent difficulty.

For the reasons above, I dismiss the Tenant's claim for compensation in its entirety. Because the Tenant was not successful in this Application, I grant no award for their Application filing fee.

Conclusion

I order the Landlord to investigate, to the fullest extent possible, the possibility that the Tenant left electronic items behind in the rental unit when they vacated. The Landlord must communicate the result back to the Tenant as soon as possible.

I dismiss the Tenant's claim without leave to reapply. There is no reimbursement for the Application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: April 4, 2023

Residential Tenancy Branch