



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Code MNRT, MNDCT, MNSD, FFT

Introduction

This hearing was convened to hear the Tenant's Application for Dispute Resolution made on December 30, 2022. The Tenant applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order for the cost of emergency repairs made during the tenancy;
- an order for compensation for monetary loss or other money owed;
- an order requiring the Landlord to return the security deposit and the pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord attended the hearing and provided affirmed testimony.

The Tenant testified the Landlord was served with the Notice of Dispute Resolution Proceeding package by registered mail. The Landlord acknowledged receipt of these documents.

The Landlord testified that the documentary evidence to be relied upon 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 the above documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given a full opportunity to present evidence orally and in written and documentary form, 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 for the cost of emergency repairs made during the tenancy?
2. Is the Tenant entitled to an order for compensation for monetary loss or other money owed?
3. Is the Tenant entitled to an order requiring the Landlord to return the security deposit and the pet damage deposit?
4. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on June 15, 2021, and that the Tenant vacated the rental unit on December 17, 2022. During the tenancy, rent of \$1,167.50 per month was due. The parties agreed the Tenant paid a security deposit of \$575.00 and a pet damage deposit of \$575.00, which the Landlord holds.

First, the Tenant claimed \$995.00 for the cost to make emergency repairs during the tenancy. These repairs were related to replacement of a door handle (\$20.00), rat traps and bait (\$35.00), repairing trim in the bathroom (\$150.00), moving costs (\$700.00), and mold resistant paint (\$50.00).

The Tenant testified that mold developed in the rental unit after she moved in. Specifically, the Tenant testified that she first noticed mold in the rental unit in December 2021. There was mold on the walls, ceiling, and in the bathroom. The Tenant also testified that mold developed on her personal belongings. The Tenant testified her health deteriorated rapidly during the tenancy. The Tenant lamented the fact that she does not have a doctor and has been unable to document her health concerns. The Tenant testified that she incurred the above costs closer to the end of the tenancy and that each represents her best estimate of the costs she incurred.

In reply, the Landlord testified the rental unit was in good condition when the Tenant moved in. The Landlord testified to his belief that mold was caused by the Tenant's inadequate heating of the unit, reduced airflow by keeping the windows closed, and poor cleaning habits.

Second, the Tenant claims \$1,450.00 for the cost to replace a couch, replace a mattress, replace two hutches, as well as personal items such as cookbooks, photographs, and paintings. The Tenant testified she has still been unable to replace the couch, but that a few other items were replaced on Marketplace.

In reply, the Landlord testified that he doesn't know about the Tenant's personal items. He advised that he told the Tenant the unit needed heat and airflow. He questioned the Tenant's assertion that he told her not to use heat because the Tenant paid for it. As a result, there would have been no reason to do so.

Third, the Tenant claims \$1,150.00 for the return of the security deposit and the pet damage deposit. During the hearing, the Tenant confirmed that she did not provide the Landlord with a forwarding address in writing.

In reply, the Landlord testified the only address he has received was in relation to the Tenant's application.

Finally, the Tenant seeks to recover the \$100.00 filing fee paid to make the application.

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 me 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. 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 \$995.00 for the cost to make emergency repairs, section 33 of the Act states that emergency repairs are those that are:

- urgent,
- necessary for the health or safety of anyone or for the preservation or use of residential property,
- made for the purpose of repairing
 - major leaks in pipes or the roof,
 - damaged or blocked water or sewer pipes or plumbing fixtures,
 - the primary heating system,
 - damaged or defective locks that give access to a rental unit, or
 - the electrical systems.

In this case, as the repairs referred to in the application do not fall within section 33 of the Act, I find there is insufficient evidence before me to conclude the repairs are emergency repairs as defined under the Act. Second, even if I had found that the repairs were emergency repairs, I find that the Tenant has not provided sufficient evidence of the value of her losses. As stated by the Tenant, the amounts claimed were merely her best estimates of losses. Similarly, I find there is insufficient evidence to conclude that mold in the Tenant's rental unit was caused or contributed to by the

Landlord's breach of the Act. As a result, this aspect of the Tenant's application is dismissed without leave to reapply.

With respect to the Tenant's claim for \$1,450.00 for the cost to replace personal items, I find there is insufficient evidence before me to grant the relief sought. First, the Tenant was unable to refer me to a detailed calculation of the amount sought as required under Rule of Procedure 2.5. In addition, while I accept that the Tenant may have purchased replacement items on Marketplace, I was not referred to any documentary evidence in support of the value of her loss. I also note that the Tenant's claims made in the application did not coincide with the copies of receipts to which I was referred during the tenancy. As a result, this aspect of the Tenant's application is dismissed without leave to reapply.

With respect to the Tenant's claim for \$1,150.00 for the return of the security deposit and the pet damage deposit, section 38 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. I find the Tenant did not provide the Landlord with a forwarding address in writing and that the Landlord's obligation to return the deposits to the Tenant has not been triggered. However, as the Landlord still holds the security deposit and pet damage deposit, I order the Tenant to provide the Landlord with a forwarding address in writing, in accordance with the Act. Within 15 days after receiving the forwarding address in writing, the Landlord will repay the deposits to the Tenant or make an application to keep them by filing an application for dispute resolution. Failure to do one of these two things may entitle the Tenant to receive double the amount of the deposits held under section 38(6) of the Act. ***This is not an extension of any time limit established under the Act.*** This aspect of the Tenant's application is dismissed with leave to reapply.

As the Tenant has not been successful, I find the Tenant is not entitled to recover the filing fee. This aspect of the Tenant's application is dismissed without leave to reapply.

Conclusion

The Tenant's request for an order for the cost of emergency repairs made during the tenancy is dismissed without leave to reapply.

The Tenant's request for an order for compensation for monetary loss or other money owed is dismissed without leave to reapply.

The Tenant's request for an order requiring the Landlord to return the security deposit and the pet damage deposit is dismissed with leave to reapply.

The Tenant's request for an order granting recovery of the filing fee is 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 25, 2023

Residential Tenancy Branch