Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF, O

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement, for the return of a security deposit and pet deposit and to recover the filing fee for this proceeding.

The Tenant's application named another person (J.F.) as a tenant, however this person was not a Party to the tenancy agreement and therefore I find that he should not have been named as a Party in these proceedings. Consequently, the Tenant's application is amended to remove J.F. as a Tenant.

This matter was originally scheduled for hearing on October 5, 2010 however the Landlord sought an adjournment of the hearing on that day. The Tenant objected to an adjournment of the hearing but admitted that she had amended her application on September 23, 2010 by adding 3 further monetary claims totalling an additional $4,000.00 and served it on the Landlord's agent together with a large evidence package which the Landlord's agent said he received on September 28, 2010. In the circumstances, I granted the Landlord's request for an adjournment.

At the beginning of the hearing, the agent for the Landlord objected to the Tenant relying on audio and video recordings taken by her son (J.F.) of the Landlord and a Terasen employee without their knowledge or consent. I find that these recordings are unreliable because there is no way to determine if they have been edited. I also find that J.F. could have manipulated the conversations in an attempt to elicit responses that otherwise would not have been made. To that end, J.F. admitted that the Terasen employee objected to an unauthorized recording being made and told him to delete it. Consequently, I find that these recordings (and written transcripts of them) should not be admitted into evidence because they are unreliable. Instead, the Parties were each given an opportunity to provide their own oral evidence of what occurred during the events in question and to cross-examine the other Party on their oral evidence and therefore I find that the recordings are not necessary.

The Tenant subsequently resubmitted audio and video recordings of sounds and spraying water apparently coming from the Landlord's suite. The Tenant's agent said she served a copy of these recordings to the Landlord's agent however, he claimed during the first day of hearing that he did not receive them. Consequently, following the first day of hearing, the Tenant was ordered to send another copy of that recording to the Landlord which she confirmed at the second day of hearing she received.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?
2. Is the Tenant entitled to the return of her security deposit and pet damage deposit and if so, how much?

Background and Evidence

This month-to-month tenancy started on March 6, 2010 and ended on August 28, 2010 when the Tenant moved out. Rent was $800.00 per month payable in advance on the first day of each month. The Tenant paid a security deposit of $400.00 and a pet damage deposit of $200.00 at the beginning of the tenancy.

The Tenant resided in the basement suite of the rental property with her two adult children and a cat. The Landlord resided in the upper floor of the rental property with her two young children. The Tenant's agent claimed that during the tenancy, there were a number of natural gas leaks and/or sewer gas leaks that started in late May 2010 and continued until August 2010 and that the Landlord failed to take adequate steps to address them. The Tenant's agent also argued that the Landlord tried to force the Tenant to move out by engaging in harassing conduct in August 2010. Consequently, the Tenant sought a rent rebate for the period, May to August 2010, compensation for moving expenses and a loss of employment income, legal fees and aggravated damages. The Landlord's agent argued that the Landlord addressed the Tenant's complaints in a timely manner and denied that she harassed that Tenant or her family.

First Gas Leak:

The Tenant claimed that she and her children first detected a faint gas odour on May 20, 2010. The Tenant's agent and son (J.F.) contacted the Landlord about the odour the same day and the Landlord said she would arrange to have someone take a look at the furnace. The Landlord said she did not believe this was urgent because J.F. asked her to deal with it when she had time. The Landlord said she was unable to reach the repair person on May 20, 2010 and had to leave a message. The Landlord said she advised J.F. that she was unable to contact the repair person and agreed that he should call Terasen to send a technician to inspect the furnace. The Landlord said J.F. contacted Terasen on May 23, 2010 and a technician came that day.

After inspecting the furnace, the Terasen technician found the main control valve had a leak and had to be replaced. The Landlord said she did not believe the repair was urgent because the technician did not turn off the gas and left a yellow ticket which he

told her meant that the part should be replaced "sooner rather than later." The Landlord said she contacted her usual repair person that day and advised him of the part that needed to be replaced but he was unable to get one that day. The Landlord said she tried contacting a second repair person who advised her that the repair was not urgent and could wait until after the long weekend. The Landlord said she contacted the repair person again on May 25th (the Tuesday following the long weekend) and he said he would get to the repair once he finished another job. The Landlord said she advised the Tenant that day and told her that she would be away for work for the next two days and the Tenant agreed that the repair could wait until she returned. The repair was made on May 28, 2010. The Landlord said nothing was said to her again about a gas odour until July 7, 2010.

Second Gas Leak:

The Tenant claimed that later in the evening of May 28, 2010 she and her children noticed a gas odour again. Consequently, the Tenant called Terasen who sent a technician to inspect the furnace. The technician found a couple of small leaks of non-toxic gas and advised the Tenant to call if the smell got worse. The Tenant admitted that she did not advise the Landlord about the gas smell on this occasion but said she told J.F. to do so and was unaware he had not. The Landlord claimed she only learned that the Tenant had made a service call to Terasen on May 28th after the tenancy ended.

The Tenant said that the smell of gas got progressively worse and therefore on July 7, 2010, J.F. contacted Terasen again. On this occasion, the attending technician found a leak in an area of pipe above the water heater. After the technician left, J.F. said he contacted the Landlord to advise her that Terasen had found a leak and she got upset with him. J.F. said the Landlord said she was concerned about repair costs since the Tenant had moved in and suggested that the Tenant or her children were somehow responsible for them. J.F. said the Landlord claimed that she would not fix the leak so he advised her that Terasen would shut off the gas to the rental property if it was not fixed within 2 days. J.F. said the Landlord told him she was getting ready for work and refused to discuss the matter with him. Consequently, the Tenant left a letter in the Landlord's mail box later that day outlining her concerns.

The Landlord admitted that she was upset when J.F. called her on July 7, 2010 to inform her that he had decided to deal with the leak himself and not consult her. The Landlord said J.F. started shouting at her over the telephone while standing at her front door waving the Terasen tag (or work order). The Landlord said she told J.F. to leave the tag in her mail box and e-mailed him the next day to advise him that she would have the furnace inspected. The Landlord said she noticed that the tag was again yellow and therefore believed the repair was not urgent. The Landlord's agent inspected the

area of the leak on July 12, 2010 and put on a temporary seal. A permanent repair was made on July 14, 2010. J.F. claimed that the repair person advised him on July 14, 2010 that the pipes had probably not been sealed properly when they were installed.

Third Gas Leak:

On July 21, 2010, J.F. contacted the Landlord to advise her that he could still smell gas and the Landlord agreed that he should call Terasen. The Landlord said J.F. advised her that he was going away camping and therefore he did not contact Terasen until July 25, 2010. The Landlord said that during this time she had been sleeping in a room adjacent to the Tenant's suite and the furnace room but could smell nothing.

As a result of his inspection on July 25, 2010, the Terasen technician could not find any trace of natural gas or carbon monoxide, however he said he thought he smelled a faint odour of sewer gas upon entering the rental unit. The technician advised the Parties that once he poured a few glasses of water down the sewer drain, the smell went away. The Parties said they believed that a solution to their problem had been found. J.F. claimed that it was on this occasion that the Landlord told him that she had had nothing but problems with the furnace since she had moved into the property 10 years prior. Consequently, J.F. argued that there had probably been previous leaks of which the Landlord had not advised them. The Landlord denied that there were any gas leaks prior to the tenancy and claimed that the only problem with the furnace was that it did not radiate heat properly upstairs in the winter months.

Fourth Gas Leak:

The Landlord said she heard no complaints from the Tenant or her children again until August 8, 2010 when J.F. sent her an e-mail advising her that the gas smell was still a problem despite pouring water down the sewer drain and he suggested contacting a plumber to inspect the drain or plumbing. In a responding e-mail of the same date, the Landlord said she "did not see a solution to this problem," that it appeared J.F. was "unhappy with the basement" and he should let her know if he was planning on leaving. The Landlord also advised J.F. that the rental property would be transferred to a new owner on September 1, 2010 and that she was uncertain if the new owner would continue the tenancy. J.F. then responded to the Landlord's e-mail in which he berated the Landlord for her alleged unwillingness to deal with the problem.

On August 17, 2010, an employee of the local MLA's office contacted Terasen on behalf of J.F. (who had made a complaint) and a technician was sent to the rental unit to inspect the furnace. The Landlord said that she could hear noise in the basement so went to the Tenant's suite and discovered that J.F. had cut the lock off the furnace room

door and that a technician was inspecting the furnace. The Landlord said she confronted J.F. about not telling her he had called Terasen and J.F. accused her of not dealing with the problem and of hiring unqualified repair people. As a result of the inspection, the technician discovered 4 small leaks and made a note on the tag (at J.F.'s request) that "there was a slight odour present in the basement suite upon arrival" and recommended that the closet area be ventilated. The Landlord said she was aware of the need for ventilation and intended to fix it in a month (when she expected the Tenant would be gone). The Tenant said no repairs were made to the furnace before she moved out on August 28, 2010.

Rent Rebate Claim:

The Tenant's agent (J.F.) argued that it was not normal for there to be a constant smell of gas in the rental unit from May 20, 2010 until the end of the tenancy. J.F. claimed that in order to deal with the odour, the Tenant constantly had to ventilate the rental unit by keeping all of the windows open. J.F. said that this meant having to leave the windows open at night despite it being uncomfortably cold. J.F. also claimed that this also meant he had to stay home most days so that gas would not build up in the rental unit. J.F. said that this interfered with his job hunting but admitted that his sister (who worked different shifts) was also home during the day from time to time.

The Tenant claimed that she was in fear of her safety and believed that if the house was not constantly ventilated that the gas would build up and cause an explosion. The Tenant said she was also concerned about leaving her cat in the rental unit with the windows closed. The Tenant admitted that the Landlord took some steps to address her complaints about the gas odours but argued that she failed to take adequate measures to repair it. The Tenant also argued that when the Landlord realized it might be a costly to find and permanently fix the problem, she refused to make any further repairs and instead accused J.F. of sabotaging the furnace.

Aggravated Damages Claim:

The Tenant claimed that the Landlord cut off their internet service and on August 9, 2010 and had her lawyer send the Tenant a letter (the same day) which claimed that the Landlord was ending her tenancy in 30 days because a new owner wanted vacant possession of the rental property. The Tenant also claimed that on August 10, 2010, the Landlord put a lock on the closet door in the rental unit where the furnace was located.

J.F. said he served the Landlord with the application for dispute resolution in this matter on August 20, 2010 and shortly thereafter the Landlord and her children began making excessive noise in an attempt to harass the Tenant and her children. Consequently, J.F. sent the Landlord a letter on August 20th demanding that she stop making noise. J.F. also provided a copy of a video and audio recording as evidence at the hearing that he said he took in the rental unit on August 20, 21, 23 and 26th. J. F. claimed that he also contacted the police on August 21, 2010 who asked the Landlord to keep the noise down. During this time, J.F. and the Tenant also claimed that they could overhear the Landlord talking to her children in the back yard and make disparaging comments about J.F.'s mental stability and employment status. J.F. further claimed that on August 21, 2010 the Landlord deliberately sprayed water off of her deck and into the entrance way of the rental unit in a further attempt to harass the Tenant.

J.F. admitted that he and his mother decided as early as July 7, 2010 that they would start looking for new accommodations however he claimed that it was difficult to find a suitable place right away that would take a pet and as a result, for the next month and ½ he and the Tenant had to endure stress and anxiety from the gas leaks and harassment from the Landlord.

The Landlord admitted that she was becoming frustrated and began to suspect that J.F. might be sabotaging the furnace. In particular, the Landlord claimed that there were no leaks prior to the tenancy and that each time there was a leak, the issue was different and seemed to occur only when J.F. was alone in the suite. As of August 8, 2010, the Landlord said J.F. became very disrespectful and hostile when dealing with her and started suggesting that the walls should be pulled apart to investigate the plumbing. The Landlord said she was not prepared to start pulling walls apart until she was sure there was a problem. Consequently the Landlord said on August 10, 2010 she decided to put a lock on the furnace room door so that J.F. could not access it. The Landlord claimed that once the Tenant and her children moved out, she had someone look at the furnace again but no repairs were made. The Landlord admitted that there was a gas smell in the rental unit for approximately 2 days after the Tenant vacated but she said that smell went away. The Landlord said the suite is currently occupied by new tenants who have not reported gas odours.

The Landlord also claimed that during this time she was negotiating a matrimonial property settlement with her ex-spouse and that as a part of that settlement they agreed that the rental property would be transferred to her ex-spouse. The Landlord said she had planned to move out by September 1, 2010 but later decided with her ex-spouse that it would be in their children's best interests to remain in the rental property and rent from him instead. The Landlord said the transfer of the property to her ex-spouse was not completed until sometime in October 2010.

The Landlord denied making excessive noise to harass the Tenant. The Landlord said that on one day she had to move heavy furniture with her 14 year old daughter and admitted that she had to drag it across the floor. The Landlord suggested that J.F. called the police in an attempt to harass her. The Landlord also denied calling J.F. derogatory names. The Landlord further denied deliberately spraying water in the Tenant's entrance. The Landlord said it was her practice to spray off her deck one a month to remove construction dust and that the Tenant returned to the rental unit unexpectedly before she was finished.

Security & Pet Deposit Claim:

The Tenant said she gave the Landlord written notice on August 24, 2010 that she was ending the tenancy on August 28, 2010. The Tenant also said she gave the Landlord her forwarding address in writing on August 28, 2010. The Landlord admitted that she received both of these documents. The Landlord said she did not return the Tenant's security deposit or pet damage deposit because she believed the Tenant had not given her adequate notice to end the tenancy.

Loss of Internet Claim:

The Tenant claimed that the Landlord cut off their internet service from August 9 – 28, 2010 and sought compensation of $15.00. J.F. argued that internet was included in the rent because the Landlord provided them with an internet cable outlet during the tenancy. The Landlord claimed that she advised the Tenant at the beginning of the tenancy that internet was not included in the rent and it was also not included in the rent on their tenancy agreement. The Landlord denied giving the Tenant an internet cable and said that in February 2010 she started using Wi Fi (which was provided by her employer) and she was unaware that it was unsecured until some later date, when she was required to implement security codes so that other users could not access it.

Loss of Employment Income Claim:

The Tenant said she had to take 2 days off work because someone had to be home while the windows to the rental unit were open and J.F. was away for 3 days camping.

Legal and Moving Expenses Claim:

The Tenant said she had to consult a lawyer after she got the Landlord's letter on August 9, 2010 seeking to end the tenancy. The Tenant said it was only as a result of the legal advice she got that she realized the Landlord's letter was not an enforceable Notice. The Tenant also argued that the Landlord should compensate her for the cost of hiring a moving truck because it was due to her failure to make repairs that the

Tenant ended the tenancy. The Landlord claimed that she thought the Tenant wanted to move "because she was not happy" and was therefore surprised that she opposed the Landlord's notice.

Analysis

Rent Rebate Claim:

Section 32 of the Act says (in part) that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and that makes it suitable for occupation by a tenant.

Section 28 of the Act says (in part) that a Tenant is entitled to quiet enjoyment including *but not limited to* the right to freedom from unreasonable disturbance. Given that s. 28 contains a non-exhaustive list of rights, it includes other things such as the right to person safety and security.

In this matter, the Tenant has the burden of proof and must show (on a balance of probabilities) that the Landlord failed to repair or maintain the rental unit and that as a result of this breach, the Tenant's right to quiet enjoyment was compromised or alternatively, that the rental unit was not fit for occupation. The Tenant argued that there was a natural gas and/or sewer gas leak in the rental unit for a 3 month period and that the Landlord failed to take adequate steps to address it. As a result of the Landlord's breach, the Tenant claimed she lost the use and enjoyment of the rental unit. The Landlord argued that she took reasonable steps to address the Tenant's concerns in a timely manner and that there was no evidence that further repairs were required.

The Landlord argued that she could not detect a smell of gas in the rental property. I find however, that there is sufficient evidence to conclude that there was an ongoing problem from May 20 to August 28, 2010 with the smell of either natural gas and/or sewer gas in the rental unit. In particular, the Tenant, her daughter and J.F. all gave evidence of the ongoing odor of gas in the rental unit and the need to constantly leave windows open to ventilate it. The Tenant also provided a witness statement of a relative who claimed that he could detect an odor of gas upon entering the rental unit. The Tenant also claimed that a Terasen technician could smell what he believed was sewer gas on July 25, 2010 and another Terasen technician could smell a slight gas odour on August 17, 2010. The Landlord also admitted that she could smell gas for 2 days after the Tenant vacated the rental unit.

However, the Tenant's agent admitted on cross-examination that there was no evidence of a gas leak that was detrimental to his or the other occupants' health but he claimed that was because the Landlord refused to "do a full evaluation." The Tenant's agent argued that the Landlord refused to fully evaluate the situation because she did not want to have to deal with what could be a costly repair. In the circumstances, I find that there is insufficient evidence to conclude that the health of the Tenant or her children was at risk due to the natural gas and/or sewer gas leak(s) or that the rental unit was not fit for occupation. Nevertheless, given that there was a constant gas odor, I find that it was reasonable for the Tenant and her children to be concerned for their safety and to take precautionary steps they could to deal with the situation by ventilating the rental unit.

The Tenant's agent also argued that the gas leak pre-existed the tenancy and that the Landlord probably knew about it. In support of this assertion, the Tenant's agent claimed that the Landlord admitted to him that she had had nothing but problems with the furnace since "day one." However, the Landlord said she never claimed that there was an ongoing gas leak of which she was aware and denied that there was one. In the circumstances, I find that there is insufficient evidence to conclude that the Landlord was aware of a pre-existing gas leak and failed to disclose it to the Tenant.

I find that a gas leak was first brought to the Landlord's attention on May 20th and that the Landlord should have dealt with this complaint immediately but instead she waited 3 days at which time the Tenant ended up calling Terasen gas to inspect the furnace. The Landlord then waited a further 5 days to do the ordered repairs because her own repair person was not available until then and she did not believe it was urgent. The Tenant's agent admitted that he did not tell the Landlord about the return of the gas smell on May 28th but instead waited until July 7, 2010. On that date, the Tenant's agent claimed the Landlord appeared to not take his concern seriously. The Landlord denied telling J.F. on July 7, 2010 that she was unwilling to fix a gas leak because it was not a big deal. However the Landlord also admitted that she did not believe the leak was urgent and that it was temporarily fixed on July 12th with a permanent seal being made 2 days later.

I find that there was a continuing problem with gas odours in the rental unit in July and August 2010 that were brought to the Landlord's attention by the Tenant. However, I find that by August 8, 2010, the Landlord made it very clear to the Tenant in an e-mail that she was unwilling to take any further steps to address the Tenant's complaints about the gas smell and wanted the Tenant and her children to move out.

In summary, I find that while the Landlord took some steps to address the Tenant's complaints about a gas odour when it first arose at the end of May, 2010, I find that as the problem persisted into early August, the Landlord refused to take any remedial

steps to investigate the source of the problem. Although the Landlord argued that her current tenants have not reported any gas smells, I give little weight to this evidence as it is hearsay and unreliable. I find that the Landlord is not liable to compensate the Tenant for the loss of use and enjoyment of the rental unit for May and June because the leak was only reported to her by the Tenant on one occasion at the end of May and not brought to the Landlord's attention again until early July. In other words, a Landlord cannot be held liable for failing to make repairs of which she has no knowledge. Although I find that the Landlord should have made the repairs sooner in late May and early July, I find that they were not significant delays for which compensation should be ordered.

I find that the Parties also made a couple of attempts in July to identify the source of the problem but were unable to do so. However, I also find that by July 20, 2010 the Landlord received 2 written notices (one from the Tenant and one from J.F.) that the Landlord's efforts were inadequate to resolve the gas odours and that the Tenant had to constantly ventilate the unit due to her concern for her safety. Notwithstanding these notices, I find that as of early August 2010, the Landlord decided to take no further action to deal with the Tenant's complaints. Consequently, I find that the Tenant is entitled to a rent rebate for August 2010 of **$600.00** for her loss of the use and enjoyment of the rental unit.

Aggravated Damages Claim:

RTB Guideline #16 – Claims in Damages describes "aggravated damages (in part) as follows at p. 3:

> "These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behavior. They are measured by the wronged person's suffering."

The Tenant argued that the Landlord failed to take adequate steps to identify the source of the gas odours when it was first brought to her attention and then refused to take any steps once she realized the problem was continuing and might result in an expensive repair. The Tenant also argued that the Landlord then engaged in harassing behaviour in an attempt to get her to leave. In particular, the Tenant claimed that the Landlord and her children deliberately made excessive noise, made derogatory comments about her son, sprayed water in their entrance way and tried to evict them when she did not have grounds to do so. The Landlord denied all of these allegations.

I find that this is an appropriate case to award aggravated damages. In particular, I find that as of August 8, 2010 the Landlord refused to address the Tenant's complaints about a gas leak and sought instead to end her tenancy. Although the Landlord claimed that she believed the Tenant's son, J.F., might be responsible for "sabotaging" the furnace, I find that she came to this conclusion without having taken any steps to verify that there were in fact, no problems with the sewer or the plumbing as the Tenant claimed. Consequently, I find that the Landlord decided to end the tenancy because she was unwilling to investigate the source of the Tenant's complaint about persistent gas odours.

In ordering aggravated damages to the Tenant, I find that the Tenant and her children reasonably believed that the gas odours could pose a risk to their safety and caused them significant stress. I also find that the Tenant and her children believed they had to continuously ventilate the rental unit by leaving windows open and that this restricted their activities outside the rental unit somewhat. The Tenant also argued that the Landlord made an unreasonable amount of noise to harass her however, I find that the audio and video recordings made by J.F. of that alleged noise on August 20, 21, 23 and 26th are not helpful to support that assertion. Similarly, I find that the Landlord's act of spraying water off of her deck on one occasion on August 21, 2010 is insufficient to conclude her intent was to harass the Tenant.

Based on the evidence of the Tenant and J.F., I find that the Landlord probably did make disparaging comments about J.F.'s mental and employment status which she and her agent also alleged throughout the hearing of this matter. I also find that the day after the Landlord informed the Tenant that she would take no further steps to address the gas odours that she instructed her lawyer to send the Tenant a letter purportedly ending her tenancy for the reason that the property was to be transferred to "a new owner" at the beginning of September 2010. However, I find that that letter was not an effective notice to end tenancy under the Act and that there was no corroborating evidence of such a property transfer having been completed or agreed to as of that date. For all of these reasons, I find that the Landlord acted recklessly and indifferently to the Tenant's safety concerns from the constant gas odours and accordingly I award the Tenant aggravated damages of **$1,000.00**.

Loss of Internet Claim:

Section 27 of the Act says (in part) that a Landlord must not terminate or restrict a service or facility unless the Landlord reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. The Tenant argued that internet services were included in the rent which the Landlord denied. Internet is not included in the Parties' tenancy agreement. The Landlord denied knowing that the Tenant had the use of an

internet cable which the Tenant disputed. Although I find it highly suspicious that the Tenant's internet service was terminated only days after the Landlord gave the Tenant notice seeking to end the tenancy, I find that there is insufficient evidence that internet was included in the rent and as a result, this part of the Tenant's claim is dismissed without leave to reapply.

Loss of Employment Income Claim:

The Tenant also sought to recover a loss of employment income for 2 days (between July 22 and July 25) as she claimed that someone had to be home while the windows to the rental unit were left open to ventilate the gas odor. However, the Tenant's daughter gave evidence that she was also at home from time to time as she worked 5 hour per day rotating shifts. Furthermore, there was no evidence as to why Terasen gas could not be called to make a service call to inspect the odour until J.F. returned on July 25, 2010 and therefore I find that there is insufficient evidence to conclude that the Tenant had to take time off of work specifically for this purpose and this part of her claim is dismissed without leave to reapply.

Legal and Moving Expenses Claim:

The Tenant argued that she had to move and thereby incur the cost of a moving truck due to the Landlord's failure to make repairs. However, I find that the Tenant would have had to incur this cost at some point when she moved out whether it was caused by the Landlord's breach of a duty under the Act or not. Consequently, I find that there are no grounds for compensating the Tenant for the cost of renting a moving truck and that part of her claim is dismissed without leave to reapply.

The Tenant also argued that she had to consult a lawyer when she received a letter from the Landlord's counsel seeking to end the tenancy. I find, however, that there is no basis for this claim either as legal costs are not recoverable under the Act. Furthermore, I find that it was not necessary but rather the Tenant's choice to seek independent legal advice about her rights rather than to rely on information from the Residential Tenancy and she would not be entitled to recover legal expenses for that reason as well. Consequently, this part of the Landlord's claim is also dismissed without leave to reapply.

Security Deposit and Pet Deposit Claim:

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit and pet damage deposit or to make an application for dispute resolution to make a claim against them. If the Landlord

does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit or pet damage deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit and pet damage deposit.

I find that the Tenant paid a security deposit of $400.00 and a pet damage deposit of $200.00. The Landlord admitted that she received the Tenant's forwarding address in writing that she put in the Landlord's mail box on August 28, 2010. Section 90 of the Act says that a document delivered in this way is deemed to be received by the recipient 3 days later. Consequently, I find that the Landlord received the Tenant's forwarding address in writing on August 31, 2010. As a result, the Landlord had until September 15, 2010 to either return the Tenant's security deposit and pet damage deposit or to make an application for dispute resolution to make a claim against them. I find that the Landlord did not have the Tenant's written authorization to keep the security deposit or pet damage deposit and that the Landlord did not make an application for dispute resolution to make a claim against the deposits. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return to the Tenant double the amount of the security deposit ($800.00) and double the amount of the pet damage deposit ($400.00) for a total of **$1,200.00**.

As the Tenant has been successful in this matter, I find that she is also entitled pursuant to s. 72 of the Act to recover the $50.00 filing fee for this proceeding. The Tenant's application to recover the cost of photographs and a police report, however, is dismissed as I find that they were unnecessary and unhelpful. Consequently, I find that the Tenant has made out a total claim for $2,850.00.

Conclusion

The Tenant's application is granted in part. A Monetary Order in the amount of **$2,850.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: December 14, 2010.

Dispute Resolution Officer