



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain double her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on October 7, 2011. I am satisfied that the tenant served this package to the landlord in accordance with the *Act*.

I am also satisfied that the parties exchanged their evidence packages with one another. Neither I nor the tenant could access a voice recording the landlord placed on a CD in his evidence package. Since the landlord did not provide any equipment whereby we could listen to this recording, I have not considered this CD evidence.

Issues(s) to be Decided

Is the tenant entitled to compensation for losses including loss of quiet enjoyment and a reduction in services and facilities agreed to as part of her tenancy but not provided by the landlord? Is the tenant entitled to recover her security deposit from the landlord? Is the tenant entitled to a monetary award equivalent to the value of her security deposit for the landlord's failure to return her security deposit to her in accordance with section 38(1) of the *Act*? Is the tenant entitled to recover her filing fee from the landlord?

Background and Evidence

This tenancy commenced on November 1, 2009 for a one-year term. The tenant took out a second fixed term tenancy to end on May 31, 2011, and a final one month fixed term tenancy of one month that ended on June 30, 2011. The parties agreed that the tenant vacated the rental unit at the end of this final fixed term by July 3, 2011. Monthly rent throughout this tenancy was set at \$1,500.00, payable in advance on the first of

each month. The tenant paid a \$750.00 security deposit and a \$750.00 pet damage deposit on or about November 1, 2009. The parties agreed that the landlord handed the \$750.00 pet damage deposit to the tenant on July 4, 2011. The landlord continues to hold the tenant's security deposit.

The tenant entered oral testimony that she provided her forwarding address in writing to the landlord on the joint move-out condition inspection report completed at the time of the joint move-out condition inspection of July 3, 2011. She said that her Post Office Box mailing address has not changed during or after her tenancy. The landlord said that he was uncertain when or how the tenant provided her forwarding address to him. He said that at one point in her tenancy she had provided him with an incorrect address. However, the landlord did not dispute the tenant's claim that she wrote her forwarding address on the joint move-out condition inspection report or that he used that forwarding address when he filed his own application for dispute resolution to retain the tenant's security deposit. The landlord did not have a copy of the joint move-out condition inspection report. Based on the landlord's inability to refute the tenant's evidence regarding her provision of her forwarding address in writing to the landlord, I accept that the landlord received the tenant's forwarding address in writing on July 3, 2011.

The tenant's application for a monetary award of \$2,166.00 included the following items:

Item	Amount
Return of Double Security Deposit (2 x \$750.00 = \$1,500.00)	\$1,500.00
Lack of Functioning Dishwasher	300.00
Lack of Hot Water for 3 Days	150.00
Loss of Quiet Enjoyment of Front Foyer of Rental Unit for 30 Days	150.00
Loss of Wages for Work (4 hours x \$16.50 = \$66.00)	66.00
Total Monetary Award Requested	\$2,166.00

The tenant also requested recovery of her \$50.00 filing fee from the landlord.

Analysis – Security Deposit

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution for an Order to make a claim to retain the security deposit. The landlord can also retain the tenant's security deposit if the tenant has given written authorization to do so to offset another amount owed to the landlord. If the landlord fails to comply with section 38(1) of the

Act, then the landlord may not make a claim against the deposit, and the landlord **must** pay the tenant double the amount of the deposit (section 38(6) of the *Act*).

The following provisions of Policy Guideline 17 of the Residential Tenancy Policy Guidelines would seem to be of relevance to the consideration of this application:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;...*
- whether or not the landlord may have a valid monetary claim...*

On July 15, 2011, the landlord applied for dispute resolution to obtain authorization to retain the tenant's security deposit, within 15 days of receiving the tenant's forwarding address in writing. The landlord did not attend the August 19, 2011 hearing scheduled to consider his application. At the hearing, the landlord testified that he did not receive the August 19, 2011 decision dismissing his application until October 21, 2011. He said that he applied for a review of that decision and only received a dismissal of his application for review of the original decision by way of a November 3, 2011 decision of another Dispute Resolution Officer of the Residential Tenancy Branch. He noted that by then, the tenant had applied for a return of double her security deposit.

I accept that the landlord did apply for dispute resolution within the 15 day time period for doing so under the *Act*. However, once his application to retain the tenant's security deposit was dismissed, he was once again required to return the security deposit in its entirety to the tenant within 15 days. Even if I were to accept the landlord's claim that he did not receive the August 19, 2011 decision until October 21, 2011, more than 15 days have elapsed since he received the November 3, 2011 decision. The tenant's application to obtain double her security deposit has no impact on the statutory time frames established for returning all of the tenant's security deposit.

For these reasons, I find that the landlord has had much longer than the 15 day time period allowed under the *Act* to return the tenant's security deposit in its entirety. Once his application to retain all or a portion of that security deposit was dismissed without leave to reapply, he was obligated to return the tenant's security deposit in accordance with the *Act*. His prior application does not remove his responsibility to return the tenant's security deposit. He has not done so and was required to do so once he failed

to perfect his application for dispute resolution by attending the hearing of his application. Well more than 15 days have elapsed since the landlord knew that he had no valid application to retain the tenant's security deposit.

Under these circumstances, I find that the tenant is entitled to obtain the return of her \$750.00 security deposit. Pursuant to section 38(6)(b) of the *Act*, I also find that the tenant is entitled to a monetary award equivalent to the amount of her \$750.00 security deposit for the landlord's failure to comply with section 38 of the *Act* by retaining her security deposit well after his application to retain that deposit had been dismissed without leave to reapply. No interest is payable over this period.

Analysis – Tenant's Application for Other Monetary Awards

I have considered the tenant's application for monetary awards related to her loss of quiet enjoyment during this tenancy and for the landlord's failure to provide services or facilities that she was supposed to receive as part of her monthly rent. At the hearing, the tenant admitted that she never committed any of her concerns about the landlord's tardiness in providing services or repairs in writing. Similarly, during the course of her tenancy, she did not apply for a reduction in her rent for services and facilities that the landlord was not providing. The tenant's failure to make a claim for these issues until after she ended her tenancy raises questions as to whether she had accepted the existing state of the services and facilities provided by the landlord. The onus of proof rests with the party making a claim for a monetary award, in this case the tenant.

I heard conflicting testimony and considered conflicting written evidence regarding the dates when the tenant claimed that she was without a properly functioning dishwasher. The tenant and those who submitted written evidence in support of her claim maintained that the tenant did not have a properly functioning dishwasher from the start of her tenancy in November 2009 until May 2010. The tenant asserted that the landlord purchased a new dishwasher shortly after December 25, 2009, but chose to store it in her recreation room for many months until he finally had it installed in May 2010.

The landlord provided an undisputed receipt of his purchase of the dishwasher on April 10, 2010. His receipt indicated that it was delivered to the store on April 17, 2010. He said that he picked it up from the store a few days later and had it installed in May 2010. The landlord also testified that he believed that the tenant and her male friend routinely failed to clean off their dishes to an extent that plugged the dishwasher. He said that he discovered large pieces of food in the new dishwasher drain. He said that he thought that the tenant did not realize the distinction between a dishwasher and a garberator.

Although I have given the tenant's application for a reduction in her rent for the lack of a functioning dishwasher careful consideration, I do not find that she demonstrated sufficient entitlement to any such reduction. I find the landlord's evidence, particularly his receipt for the purchase of the new dishwasher, more convincing than the evidence provided by the tenant in this regard. I also note that she waited well over a year after the new dishwasher was installed to submit her claim for a reduction in rent for this item from November 2009 until May 2010. I dismiss this portion of the tenant's claim without leave to reapply.

There was also conflicting evidence regarding the duration and the circumstances surrounding the tenant's claim for a reduction in rent for the lack of hot water for a three day period while the landlord installed a new water heater. The parties disagreed as to the notice that was given that the landlord was planning to undertake this project and the duration of the repairs. The landlord testified that there was no hot water for a 48 hour period, not the three day period claimed by the tenant. Although it was no doubt an inconvenience to be without hot water for a period of time, I accept the landlord's explanation that he needed to prepare the premises for the removal of the old water heater and replacement with a new water heater. He said that wiring had to be upgraded in order to install a much higher capacity water heater in response to the tenant's complaints about the inadequacy of the existing system. I do not find that the repairs were unnecessarily delayed. However, in recognition of the inconvenience caused to the tenant and the lack of detail that the landlord provided with respect to his notification to the tenant, I allow the tenant a nominal reduction in rent for the lack of hot water for a short period of time during her tenancy in the amount of \$25.00.

I also heard evidence from both parties regarding the tenant's claim that she was without effective use of her front foyer, the main entrance, to the front of this rental unit for a 30 day period while the landlord attempted to repaint that area. The landlord did not dispute the tenant's estimate that the repainting process for this relatively small area (e.g., approximately 6 feet by 10 feet) took 30 days to complete. He provided a number of explanations for why this process became lengthy, including the difficulty that the painter experienced in trying to cover the previous bright coat of paint with multiple primers on walls and the ceiling. I do not find a small painting job of this type should have led to the type of disruption with ladders, paint cans, drop sheets, etc., placed in the main entrance to the tenant's rental unit for a one month period. Based on the evidence presented, I am satisfied that the tenant did suffer a loss of quiet enjoyment during this period as a result of the landlord's failure to complete this project in a timely fashion. As such, I issue a monetary award in the tenant's favour in the amount of \$100.00 to compensate her for her loss of quiet enjoyment during this portion of her tenancy.

As mentioned at the hearing, I find that the tenant is not entitled to recover wages that she lost to participate in any of the hearings she attended with respect to this tenancy. This item is not recoverable under the *Act*. However, as the tenant has been successful in her application, I allow her to recover her \$50.00 filing fee for this application from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the following terms which allows the tenant to recover double her security deposit, to recover an amount for the landlord's failure to provide hot water for a portion of her tenancy, to recover an amount for loss of quiet enjoyment during her tenancy, and to recover her filing fee for her application.

Item	Amount
Return of Double Security Deposit (2 x \$750.00 = \$1,500.00)	\$1,500.00
Reduction in Rent for Lack of Hot Water	25.00
Reduction in Rent for loss of Quiet Enjoyment (Repainting of Front Foyer)	100.00
Filing Fee	50.00
Total Monetary Order	\$1,675.00

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the remainder of the tenant's claim for a monetary award 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: December 20, 2011

Residential Tenancy Branch