



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: MNSD, MNDC, FF
For the landlord: MNDC, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The tenant applied for a monetary order for money owed or compensation under the Residential Tenancy Act (the "Act") or tenancy agreement and a return of her security deposit, and to recover the filing fee for the Application.

The landlord applied for a monetary order for money owed or compensation for damage or loss and to recover the filing fee for the Application.

The hearing process was explained to the parties. Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and respond each to the other and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

I have not accepted the tenant's computer flashdrive evidence, as this type of evidence is not in accepted format for purposes of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss and for a return of her security deposit, and to recover the filing fee?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss and to recover the filing fee?

Background and Evidence

This 6 month, fixed term tenancy began on August 1, 2011, was to end on January 31, 2012, actually ended on September 30, 2011, when the tenant vacated the rental unit, monthly rent was \$1,150.00 and the tenant paid a security deposit of \$575.00 at the

beginning of the tenancy on or about August 2, 2011. I heard testimony from the tenant and the landlord that the tenant moved into the rental unit prior to the start date listed on the tenancy agreement, July 27, 2011.

Tenant's claim and evidence:

The tenant's claim is in the amount for \$4,036.36, as follows:

Security Deposit, doubled	\$1,200.00
Moving expense	\$1,642.00
Internet did not work, 2 months	\$800.00
2 nights at a hotel	\$244.36
Filing fee	\$50.00
Total	\$4,036.36

(I note that the tenant misidentified the amount of her security deposit, which was actually \$575.00 instead of \$600.00)

The tenant's relevant evidence included an affidavit from the tenant, a letter from the tenant's mover regarding a dropped piece of pottery by the mover, a note from the tenant's friend regarding the smell in the rental unit, a letter from an environmental health officer regarding an inspection of the rental unit on September 26, 2011, a copy of a cheque from the landlord for the amount of the security deposit returned to the tenant, and electronic evidence.

Additionally, the tenant submitted a hotel receipt and additional electronic evidence the day prior to the hearing. The tenant was informed that this evidence was not timely submitted under the Residential Tenancy Branch Rules of Procedure and was excluded from consideration for the purposes of this Decision.

Tenant's relevant testimony:

The landlord did not return her security deposit until October 17, 2011, as indicated by the postmark on the envelope, and that she did not receive the funds until after filing her application, on November 1, 2011. Due to this, she is entitled to double her security deposit.

The landlord failed to provide laundry services as provided for in the tenancy agreement, as the landlord, at the tenant's request, removed the washer/dryer unit. The washer/dryer unit caused a mouldy smell, which could not be removed despite cleaning and which caused the tenant to suffer physical symptoms. The tenant admitted that the landlord wanted to return the washer/dryer unit, but that she refused.

The tenant sent an email to the landlord on August 31, 2011, in which she gave notice to the landlord that she was going to start looking for a new rental unit and would be

moving early. The tenant stated that she confirmed in an email dated September 19, 2011, that she would be moving on October 8, 2011.

The tenant stated she is entitled to moving expenses as she had to move out early, on September 30, 2011, and not October 8, 2011, as she had requested from the landlord, the date for which she had arranged for a mover. The tenant stated that the mover cost several hundred dollars more on September 30.

The tenant also submitted that the landlord forced her into agreeing that her notice of August 31 that she was looking for another place to live, was her 30 day notice to vacate and that September 30, 2011, was her 1 month notice.

As to the ineffective internet connection, the tenant stated the connector box was located in the landlord's home, the upper unit of the residential property, as the box could not be located in her basement unit due to the layout, according to the internet provider. The tenant also stated that the landlord's son interfered with her having proper an internet connection. The tenant stated that she worked from home relying on an internet connection, and the lack of proper service prevented her from sending her large files.

The tenant submitted she is entitled to hotel expenses as the landlord forced her to leave before October 8, and she could not find another home for several days.

Upon query, the tenant stated that she ended the tenancy early as she could not take the smell in the rental unit and because she could not send large files from her home computer, where she worked.

In response, the landlord submitted that he placed the tenant's security deposit in the mailbox on October 10, 2011, even though the cheque was dated October 15, 2011.

The landlord stated that the tenant moved in early, on July 27, 2011, and before the official start of her tenancy, on August 1, 2011, the tenant had requested that the landlord remove the washer/dryer unit. The landlord stated that he asked the tenant several times if he could move the unit back into the rental unit and that she refused. The landlord also stated that he offered the tenant the opportunity to do her laundry in the upper unit, and she refused.

As to the moving expenses or having to move early, the landlord denied that the rental unit smelled of mould. Additionally, the landlord submitted that he uses a different internet provider apart from the tenant, did not have a box from the tenant's internet provider and could not be responsible for the service difficulties suffered by the tenant from her internet provider.

The landlord submitted that the August 31, 2011, email from the tenant did not give a specific date that she was moving and that it was only a general notice that they should keep their eyes open for a new tenant. The landlord stated that when they received the

tenant's notice on September 19 of her intention to move on October 8, 2011, they secured the tenant's confirmation that the August 31 notice was her 30 day notice to move.

Additionally, the landlord submitted that the tenant broke the lease early and the landlord should not be held responsible for the tenant's moving costs.

Landlord's claim and evidence:

The landlord's claim is in the amount of \$5,600.00 as follows:

Rental for storage of tenant's belongings, August	\$50.00
Rental for unauthorized use of Bsmt. suite, July 27 th to 31 st	\$750.00
Loss of revenue for breach of tenancy agreement	\$4,600.00
Clean up costs after end of tenancy	\$100.00
Filing fee	\$50.00
Total	\$5,600.00

The landlord's relevant evidence included the tenancy agreement, the condition inspection report, email trains between the landlord and tenant, both prior to the tenancy and during the tenancy, including the tenant's notice of August 31 and September 19, 2011, and photos of the rental unit.

The landlord's relevant testimony:

In support of his application, the landlord stated that the parties agreed that the tenant would pay \$50.00 per month for storage of her belongings at a separate location and that the tenant did not pay the agreed upon fee for September. The tenant admitted that she was unaware the fee for September was not paid and did not contest this amount.

As to \$750.00 for 4 days use of the rental unit prior to the start date mentioned in the tenancy agreement, the landlord stated that the tenant did not have permission to start living in the rental unit, only to move in a few boxes. Despite this, the tenant moved in on July 27th. The landlord did admit that the amount requested should be prorated on a daily basis, instead of the request for \$750.00.

Upon query, the landlord stated that he never asked the tenant for compensation for the 4 days, and that the request for \$750.00 was in response to the tenant filing an application.

As to the loss of revenue, the landlord stated that he did not object to the tenant moving out, but that the "vague" email he received from the tenant on August 31, 2011, to keep his eyes open, did not constitute sufficient final notice as there was not move-out date listed. Additionally, the landlord submitted the tenant verbally informed him in

September that the email of August 31, 2011, was her official 1 month notice of termination.

Upon query, the landlord stated that he did attempt to re-rent the rental unit, but did not make notes of specific dates when the listing was advertised, until receiving the tenant's application.

The landlord stated that the tenant left garbage in the rental unit, and that the charge of \$100.00 was a minimal charge.

In response, the tenant stated that she received permission from the landlord to move in on July 27, which was part of the arrangement in taking this rental unit.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In monetary claims, awards for compensation for damage or loss are provided under sections 7 and 67 of the Residential Tenancy Act (the "Act"). A successful applicant cannot simply allege a violation of the Act, regulations or tenancy agreement by the other party, but rather, the applicant must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Tenant's application

Return of security deposit- Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the landlord was required to return the tenant's security deposit or file for dispute resolution no later than October 15, 2011.

The landlord testified that he placed the envelope containing the tenant's security deposit in the mailbox on October 10, 2011, and the tenant stated she did not receive it until after filing for dispute resolution. I do not accept the landlord's submission that he placed the envelope in a post box and that it took the post office one week to process

the mail. I therefore find on a balance of probabilities that the landlord did not mail the tenant's security deposit within fifteen days following the end of the tenancy and instead waited until October 17, 2011.

In reaching this conclusion, I was persuaded by the written evidence submitted by the tenant, which was a copy of the envelope showing a postmark of October 17, 2011, and the cheque, which was dated October 15, 2011. I also do not accept that the landlord mailed the cheque on October 10, 2011, yet dated the cheque for October 15, 2011.

Based on the above, I find that the landlord failed to comply with Section 38(1) of the *Act* and therefore the tenant is entitled to a return of her security deposit, doubled, pursuant to Section 38(6) of the *Act*.

I therefore find that the tenant has established a **monetary claim** in the amount of **\$575.00** ($\$575.00 \times 2 = \$1,150.00$ less \$575.00 previously paid to the tenant)

No laundry for the 2 months of the tenancy-I find that the tenant requested the landlord to move her laundry facilities prior to the actual start date of the tenancy and refused the landlord's attempts to return the unit. Additionally the tenant failed to submit sufficient evidence that she incurred a financial loss for alleged lack of laundry. I therefore find the tenant has failed to meet steps 2 and 3 of her burden of proof.

Additionally, I find the tenant refused the landlord's offer of doing her laundry upstairs in his home, and I find the tenant therefore failed to take reasonable measures to mitigate her loss.

Due to the above, I **dismiss** the tenant's claim for loss of laundry for **\$100.00**.

Moving expenses-the tenant makes a claim for moving expenses based upon her assertion the landlord failed to remediate the mould and mould odour and prevented her from having full internet service.

The landlord is required under section 32 of the *Act* to provide and maintain the residential property in a state of decoration and repair which complies with health, safety and housing standards required by law.

Where a tenant requests repairs, the landlord must be afforded a reasonable amount of time to take sufficient action. In the case before me, there was no indication in the August 31, 2011, notice from the tenant to the landlord that she was ending her tenancy early due to a lack of repairs or remediation for an alleged mould presence. Additionally, the first written indication the tenant provided that the internet and mould was a problem was on her September 19, 2011, email, which gave her move-out date, not a request for repairs.

I also find the tenant submitted insufficient evidence to prove that the landlord was responsible for the tenant's problems with her internet company.

As I find insufficient evidence of a request to the landlord for repairs or that there was a mould presence or of an internet problem due to the fault of the landlord, I **dismiss** the tenant's monetary claim for **\$1,642.00**.

Even had I not dismissed the tenant's claim due to insufficient evidence, I would still have dismissed her claim for moving expenses. These are choices the tenant made, both in entering into a tenancy and ending a tenancy, on how to facilitate her moving and I find the tenant has failed to provide sufficient evidence to hold the landlord responsible for choices made by the tenant.

Internet not working-As I have found that the tenant submitted insufficient evidence that the landlord was responsible for the internet difficulties between the tenant and her internet provider or that the landlord was responsible for the tenant's internet difficulties, I **dismiss** the tenant's monetary claim for **\$800.00**.

2 nights in a hotel-I find that the tenant was the party ending the tenancy early and left the landlord at a disadvantage in re-renting the rental unit due to the tenant's notice to vacate being very non-specific as to a move-out date. As well, I can find no violation of the Act, regulations or tenancy agreement by the landlord which make the landlord responsible for reimbursement of hotel expenses. I therefore **dismiss** the tenant's monetary claim for **\$244.36**.

Landlord's application

Rental for Storage space apart from the rental unit-the tenant acknowledged that she did not realize the agreed upon storage fee was not paid and that she owed the amount claimed. I therefore find that the landlord has established a monetary claim for **\$50.00**.

Additional storage space apart from the rental unit from July 27th to July 31st- I find the landlord submitted insufficient evidence to prove that the tenant was responsible for the days in July for storage, due to the lack of an agreement. I therefore **dismiss** the landlord's monetary claim for **\$50.00**.

Rental for July 27th to July 31st- I find upon a balance of probabilities that the landlord agreed to let the tenant into the rental unit a few days early before the tenancy began and did not make a demand for a prorated rent for this agreement. Additionally, the landlord acknowledged that he made a claim for this amount in his application to retaliate against the tenant for her application. I do not find that retaliation is a ground for claiming monetary compensation. I therefore find that the landlord submitted insufficient evidence to substantiate his claim and I **dismiss** his claim for **\$750.00**.

Loss of revenue-Section 45 (2) of the Residential Tenancy Act requires a tenant to give notice to end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

Based on the testimony and evidence and a balance of probabilities, I find that the tenant failed to comply with the Act by providing insufficient notice to the landlord of her intent to vacate the rental unit early.

However, although there was disputed verbal testimony of the actual end date of the tenancy, the landlord stated that he considered the end date to September 30, 2011. I therefore find the landlord submitted insufficient evidence that he took reasonable steps to mitigate his loss by advertising the rental unit and therefore has failed to meet step 4 of his burden of proof. I therefore **dismiss** his monetary claim for **\$4,600.00** for loss of revenue.

Clean up costs-The landlord has submitted insufficient evidence that he incurred any costs for cleaning the rental unit or that the tenant left the rental unit in a state which required cleaning, due to a lack of a properly completed move-in or move-out condition inspection report, photos or receipts. I therefore **dismiss** his monetary claim for **\$100.00**.

As I find that each party has established some portion of their monetary claim, I decline to award either party recovery of the filing fee.

I find that the **tenant** has established a total monetary claim of **\$575.00** for the landlord's failure to return the tenant's security deposit within 15 days of the end of the tenancy.

I find that the **landlord** has established a total monetary claim of **\$50.00** comprised of unpaid storage fee for September, 2011.

I therefore **offset** the landlord's monetary claim of **\$50.00** with the tenant's monetary entitlement of **\$575.00** and find the tenant is entitled to a monetary order for \$525.00.

I **direct** that the landlord return to the tenant the balance of the security deposit less the offset, in the amount of \$525.00. I **grant** the tenant a monetary order under authority of section 67 of the Act for the amount of **\$525.00**.

I am enclosing a monetary order for **\$525.00** with the tenant's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court (Small Claims) should the landlord fail to comply with this monetary order.

Conclusion

The tenant has established a monetary claim of \$575.00, for her security deposit, doubled, less the amount of \$575.00 already paid by the landlord.

The landlord has established a monetary claim of **\$50.00**.

The landlord's monetary claim is offset against the tenants' entitlement and the tenant is granted a monetary Order for \$525.00.

In the event the tenant has not redeemed or is unable to redeem the landlord's refund cheque of \$575.00, the tenant may make a request of the Residential Tenancy Branch for a revised monetary order for an additional \$575.00.

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 20, 2012.

Residential Tenancy Branch