



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This hearing dealt with the tenant's application for return of double the security deposit; interest on the security deposit; and, compensation for loss of cable services.

The landlord did not appear at the hearing. Where a respondent does not appear at a hearing, the applicant bears the burden to show the respondent was sufficiently served with the hearing documents. Section 89(1) provides for service of an Application for Dispute Resolution. If a tenant serves a landlord by registered mail, the Act requires that it be sent to "the address at which the person carries on business as a landlord".

I was provided the following testimony and evidence by the tenant with respect to service of hearing documents upon the landlord:

The tenant sent the hearing documents to the landlord at his place of business, as a realtor, via registered mail on October 27, 2011. The tenant provided a registered mail receipt and Canada Post tracking information showing the registered mail was successfully delivered. The tenant submitted that she sent the registered mail to the landlord's place of business as the only service address provided to her by the landlord was the residential property where she was a tenant. The tenant explained that there were three units at the residential property and the landlord did not live in any of the units. Rather, all of the units were tenanted. The tenant further explained that any mail addressed to the landlord at the residential property would accumulate in the communal mailbox for long periods of time, usually a month or so, and then disappear. The tenant provided a copy of the tenancy agreement and the 2 Month Notice to End Tenancy she was served by the landlord. These documents provide a phone number and a fax number for the landlord. The tenant provided a search of the landlord's business website which listed the same phone number and fax number as those appearing on the tenancy agreement and the 2 Month Notice.

Having considered all of the above, I accepted the tenant's position that the landlord was conducting business as a landlord from his place of business as a realtor rather than the residential property where the rental unit is located. I was also satisfied the

landlord had a significantly greater likelihood of receiving the hearing documents at his place of business than any registered mail sent to the residential property where he did not reside and from which did not frequently collect his mail. Therefore, I found the landlord sufficiently served with the hearing documents and I proceeded to hear from the tenant without the landlord present.

Issue(s) to be Decided

1. Has the tenant established an entitlement to return of double the security deposit and interest on the security deposit?
2. Has the tenant established an entitlement to compensation for loss of cable services?

Background and Evidence

The parties entered into a written tenancy agreement for a tenancy set to commence August 1, 2007 for a monthly rent of \$850.00. The tenant paid a \$425.00 security deposit on August 18, 2007. The tenancy ended September 30, 2011 when the tenant vacated the rental unit. The landlord and tenant inspected the unit together at the beginning and end of the tenancy but the landlord did not prepare or provide the tenant with a condition inspection report. The tenant did not authorize the landlord to make any deductions from the security deposit.

The tenant is claiming compensation of \$ 119.40 from the landlord for three months of loss of cable service. The written tenancy agreement indicates the monthly rent included cablevision. The tenant submitted that in July 2011 her cable was disconnected without prior notice from the landlord. She contacted the landlord and he agreed to compensate her for the loss of this service but the landlord did not fulfill this agreement. The tenant confirmed that her monthly rent was not reduced and she continued to pay rent of \$850.00 per month. The tenant submitted correspondence she received from Shaw indicating the cable service she acquired had a cost of \$39.90 per month plus HST. The tenant submitted that the cable she acquired actually provided her with fewer channels than the cable service provided to her by the landlord.

On October 6, 2011 the tenant faxed the landlord her forwarding address and requested return of her security deposit and accrued interest of \$9.08. The tenant also reminded the landlord of his agreement to reimburse her for cable services totalling \$119.40. The fax number she used was the number provided on the 2 Month Notice to End Tenancy the landlord had served upon her. The tenant provided the fax transmittal report as

evidence the fax was successfully sent to the fax number provided to her by the landlord.

On October 21, 2011 the tenant faxed another letter to the landlord at the fax number he had provided to her. The letter again requested return of the security deposit and reimbursement for cable services and she provided an alternative address for the landlord to send a cheque. The tenant provided a copy of the fax transmittal report to show the letter was successfully sent. The tenant testified that she also confirmed with the receptionist at the landlord's real estate office that the fax was received.

Documentary evidence considered in making this decision included: the tenancy agreement; the 2 Month Notice to End Tenancy; the letters faxed to the landlord on October 6 and 21, 2011; the fax transmittal reports; the registered mail receipt and tracking information from Canada Post.

Analysis

Section 38(1) of the Act requires the landlord to either return the security deposit and applicable interest to the tenant or make an application for dispute resolution claiming against the security deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Should a landlord fail to comply with the requirements of section 38(1) the landlord must pay the tenant double the security deposit.

I find that the tenancy ended September 30, 2011 and the tenant provided her forwarding address to the landlord in writing via a fax sent to the landlord, at a fax number provided to her by the landlord, on October 6, 2011. Section 90 of the Act deems a fax to be received three days after it is faxed. Accordingly, I find the fax was received by the landlord October 9, 2011. Therefore, the landlord had until October 24, 2011 to either refund the security deposit and interest to the tenant or make an Application for Dispute Resolution. Since the landlord did not comply with section 38(1) I find the landlord must now pay the tenant double the security deposit, plus interest on the original amount of the deposit. I accept the tenant's calculations that accrued interest on the original deposit totals \$9.08.

Upon review of the written tenancy agreement I accept that cablevision services were to be provided to the tenant by the landlord. I accept the tenant's submissions that she stopped receiving cable serves from the landlord in July 2011. Section 27 of the Act deals with restriction or termination of a service or facility. Cablevision is, by definition,

a service or facility. Should a landlord wish to terminate a non-essential service or facility the Act requires the following:

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) 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.

In this case, I am satisfied the landlord did not give the tenant notice that the cable would be terminated and he did not reduce her rent. Therefore, I find the landlord violated section 27 of the Act and I find the tenant has provided sufficient evidence to establish the devaluation of her tenancy as a result of this violation. Therefore, I grant the tenant's request to recover \$119.40 from the landlord for loss of cable services from July 2011 through September 2011.

As the tenant was successful in this application I award the \$50.00 filing fee to the tenant.

In light of the above, the tenant is provided a Monetary Order calculated as follows:

Double security deposit (\$425.00 x 2)	\$ 850.00
Interest on security deposit	9.08
Loss of service or facility (cablevision)	119.40
Filing Fee	<u>50.00</u>
Monetary Order	\$ 1,028.48

To enforce the Monetary Order it must be served upon the landlord and may be enforced in Provincial Court (Small Claims) as an Order of that court.

Conclusion

The tenant was successful in this application and has been provided a Monetary Order in the amount of \$1,028.48 to serve upon the landlord and enforce as necessary.

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 24, 2012.

Residential Tenancy Branch