



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 a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 11:17 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The tenant testified that the landlord provided her with a 2 Month Notice to End Tenancy for Landlord Use of Property (the 2 Month Notice) on August 1, 2011, requiring that she vacate the rental unit by October 1, 2011. She testified that on January 26, 2012, she sent a copy of her dispute resolution hearing package to the landlord by registered mail at two separate mailing addresses he had provided to her during her tenancy. She said that the landlord advised her at the end of her tenancy that she could send her forwarding address to the dispute address, as he was conducting his business as a landlord from that location. The tenant provided copies of the Canada Post Tracking Number and Customer Receipt to confirm that she mailed her dispute resolution hearing package to both of the addresses the landlord had provided to her. Based on the tenant's undisputed evidence, I am satisfied that the landlord served the tenant with the 2 Month Notice and the tenant served the landlord with her dispute resolution hearing packages in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to obtain a monetary award equivalent to one month's rent pursuant to section 51(1) of the *Act*? Is the tenant entitled to recover her security deposit from the landlord? Is the tenant entitled to a monetary award equivalent to the amount of her security deposit for the landlord's alleged failure to return her security

deposit in accordance with section 38 of the *Act*? Is the tenant entitled to recover her filing fee from the landlord?

Background and Evidence

This periodic tenancy commenced on or about February 15, 2004. Monthly rent by the end of this tenancy was set at \$1,020.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$475.00 security deposit paid on or about February 13, 2004.

The tenant testified that the landlord issued her (and the basement tenant in this two-unit rental home) a 2 Month Notice so that the landlord could conduct renovations in preparation of his listing the property for sale on the real estate market. She entered into written evidence a copy of a recent real estate listing to confirm that the landlord took this action.

The tenant testified that she was unable to find alternate accommodations by the October 1, 2011 effective date on the landlord's 2 Month Notice. However, after consulting with the landlord's representative, she was able to remove her belongings from the house by October 6, 2011, clean the house and deliver her keys to the landlord's representative by October 9, 2011. She said that she was able to remove everything from the garage by October 18, 2011, at which time she had totally vacated all portions of the rental property.

The tenant testified that she provided the landlord with her forwarding address in writing on December 5, 2011. She applied for dispute resolution because the landlord did not return her security deposit within 15 days of her provision of her forwarding address to the landlord. She also applied for a monetary award of one month's rent as she was not compensated for this amount by the landlord in accordance with the *Act* after receiving his 2 Month Notice.

Analysis

Section 51(1) of the *Act* reads in part as follows:

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement...*

Based on the tenant's undisputed evidence, I am satisfied that the landlord issued a 2 Month Notice under section 49 of the *Act* and has not compensated the tenant in

accordance with section 51(1) of the *Act*. As such, I issue a monetary award in the tenant's favour in the amount of \$1,020.00, an amount equivalent to one full month's rent.

Based on the tenant's evidence, the tenant did not yield vacant and clear possession of the rental property to the landlord by October 1, 2011, the effective date identified in the landlord's 2 Month Notice. I have taken into account the tenant's claim that her overholding of occupancy of the house until October 6, 2011 and provision of the key to the house to the landlord's representative on October 9, 2011 did not inconvenience the landlord and did not hamper the landlord's renovations. I have also considered the tenant's claim that her continuing occupancy of the garage until October 18, 2011 did not present problems for the landlord, nor was the landlord planning to re-rent any of the premises to anyone else for any part of October 2011. Despite the tenant's assertions, I find that the tenant continued to occupy part of the property until October 18, 2011. As such, I find that the tenant's claim for a monetary award is reduced by the pro-rated amount of monthly rent that would have been owing for her overholding her tenancy from October 1, 2011 until October 18, 2011. I find that the tenant's monetary award is reduced by \$592.26, representing 18/31 of the \$1,020.00 monthly rent established for this tenancy.

The tenant also admitted at the hearing that she did not pay \$20.00 of her monthly rent for either August 2011 or September 2011. I find that the tenant's monetary award is reduced by \$40.00 to reflect her failure to pay all of the monthly rent owing for those months.

The tenant entered oral and written evidence that she damaged a door during this tenancy, for which at one point she agreed to compensate the landlord. While the landlord apparently asked for \$250.00 to repair this door, the tenant testified that she could have repaired this door for \$150.00. As no objective evidence was presented by either side with respect to this damage and I find that this damage did indeed exceed that which would result from normal wear and tear, I reduce the tenant's monetary award by \$200.00, the average of the two estimates entered into evidence by the tenant.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written

authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

In this case, I find that the landlord had 15 days after December 5, 2011, the date when the tenant provided her forwarding address in writing to the landlord to return her security deposit. Based on the undisputed evidence before me, I find that the landlord continues to hold the tenant's \$475.00 security deposit plus applicable interests. I direct the landlord to return the tenant's \$475.00 security deposit plus applicable interest.

The landlord did not apply for dispute resolution within 15 days nor obtain the tenant's written permission to retain her security deposit, but withheld the tenant's security deposit without authorization. In accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a monetary award of \$475.00, an amount equivalent to her security deposit retained by the landlord.

As the tenant has been successful in her application, I allow her to recover her \$50.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the following terms which allows the tenant a monetary award pursuant to section 51(1) of the *Act* (less relevant deductions), a monetary award pursuant to section 38(6) of the *Act*, to recover her filing fee and to obtain a return of her security deposit:

Item	Amount
Monetary Award pursuant to Section 51(1) of the <i>Act</i> for Landlord's Failure to Comply with Provision of 1 Month Rent Credit to Tenant	\$1,020.00
Less Overholding Rent October 1-18, 2011	-592.26
Less Unpaid Rent (2 x \$20.00 = \$40.00) for August and September 2011	-40.00
Less Tenant's Damage to Door	-200.00
Security Deposit plus Interest (\$475.00 + \$16.82 = \$491.82)	491.82
Monetary Award pursuant to Section 38(6) of the <i>Act</i> for Landlord's Failure to comply with return of Security Deposit	475.00

Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,204.56

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.

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: March 26, 2012

Residential Tenancy Branch