



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, O,

Introduction

This hearing dealt with applications from the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filings fee for their application from the tenant pursuant to section 72.

The administratrix for the tenant's estate (the tenant's agent) applied 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 double the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties also applied for other unspecified remedies in their applications.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant's agent confirmed that she received a copy of the landlord's dispute resolution hearing package by registered mail on March 14, 2012. Landlord's representative TC (the landlord) confirmed that the landlord received a copy of the tenant's agent's dispute resolution hearing package sent by the tenant's agent by registered mail on April 24, 2012. I am satisfied that these documents and the parties' written evidence were served to one another in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this

tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the tenant's agent acting on behalf of the tenant's estate entitled to a monetary award for the return of a portion of the tenant's security deposit? Is the tenant's agent acting on behalf of the tenant's estate entitled to a monetary award equivalent to the amount of the security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act? Are either of the parties entitled to recover their filing fees for this application from the other party?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

This tenancy commenced on or about November 16, 2006. Monthly economic rent for this subsidized rental unit was set at \$587.00 by the end of this tenancy, of which the tenant was paying \$320.00 each month. The landlord continues to hold the tenant's \$125.50 security deposit paid on or about November 17, 2006.

The tenant passed away on October 6, 2011. Since the tenant had paid her rent for October 2011 and it was unclear if a relative or next of kin would surface to look after the tenant's affairs, the landlord did not consider the tenancy at end until the end of that month. As no one with legal authority to act on behalf of the tenant's estate contacted them, the landlord packed the tenant's belongings and stored them for safekeeping. The landlord was able to locate a new tenant who took occupancy of the rental premises on November 19, 2011.

The landlord's application for a monetary award of \$183.12, included the following items:

Item	Amount
Cleaning	\$30.00
Excess Painting Cost	127.50
Loss of Rent November 1, 2011 to November 18, 2011	155.00
Less Security Deposit and Interest (\$125.50 + \$3.88 = \$129.38)	-129.38
Total Monetary Award Requested	\$183.12

The landlord also requested that the landlord be:

- *released from paying two times the damage deposit for the following reason. From the date of presentation of legal papers on December 2, 2011 to the final billing on December 15, 2011 only constitutes 14 days.*
- *exonerated for our handling of all food items open or closed as well as hygiene and cleaning agents.*
- *exonerated from her expenses that she is claiming against us and her so called missing rings.*

The tenant's agent application for a monetary award of \$786.87 included the following items:

Item	Amount
Double Damage Deposit (2 x \$125.50 = \$251.00)	\$251.00
Interest on Deposit	3.87
Travel Expenses Incurred as a result of landlord's refusal to honour Letters of Administration and Order 2 trips to Nelson @ \$65.00 plus 3 trips to Nakusp @ \$22.00 = \$196.00)	196.00
Missing Food Items, estimated at \$100.00	100.00
Missing General Cleaning Items, estimated at \$100.00	100.00
Missing Jewellery - \$200.00	200.00
Less rent owing from November 1, 2011 to November 6, 2011 (6/30 x \$320.00 = - \$64.00)	-64.00
Total Monetary Award Requested	\$786.87

Both parties also requested the recovery of their respective \$50.00 filing fees from one another.

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 seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the

tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, the evidence is that the landlord accepted that by December 2, 2011, the landlord had a forwarding address in writing from the tenant's agent as administratrix of the tenant's estate requesting the return of the security deposit. In the landlord's written evidence of March 8, 2012, the landlord maintained that the action taken by the landlord on December 14, 2011 was done within the 15-day time limit for taking action after receiving the forwarding address in writing.

I find that the December 14, 2011 letter referred to in the landlord's written evidence does not return the tenant's security deposit in full as required by the *Act*, nor was it an application for dispute resolution. Rather, the landlord's letter provided an itemized list of items for which the landlord planned to seek compensation for damage and losses arising out of this tenancy. The landlord's crediting of \$125.50 towards the landlord's bill for losses does not comply with the provisions of section 38 of the *Act*. The losses identified in that letter were not part of any legal application for a monetary award pursuant to the *Act*. I find that the landlord had no authorization under the *Act* to withhold the tenant's security deposit as if the landlord had a legal monetary Order from a Dispute Resolution Officer appointed under the *Act*.

I find that the landlord has not returned the security deposit within 15 days of receipt of the tenant's agent's forwarding address in writing. The tenant's agent acting on behalf of the tenant's estate is therefore entitled to a monetary order amounting to double the deposit with interest calculated on the original amount only.

Having been successful in this application, I find further that the tenant's agent on behalf of the tenant's estate is entitled to recover the \$50.00 filing fee paid for this application.

Analysis – Remainder of Tenant's Agent's Monetary Claim

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party.

Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Although I have given the tenant's agent's evidence careful consideration, I find that she has not demonstrated to the extent required that the travel expenses she claims to have incurred resulted from any violation of the tenancy agreement or a contravention of the *Act*. As the landlord noted, some of the trips claimed by the tenant's agent may very well have been required whether or not the landlord had "honoured" the Letter of Administration and Order provided by the tenant's agent. The landlord also noted that these travel expenses may also be recoverable by the tenant's agent as legitimate expenses arising out of her handling of her duties as administratrix of the tenant's estate. In addition, it does not seem unreasonable that the landlord wanted to exercise due caution and wait to receive official notification from the court when an unrelated person claimed to be acting on behalf of the tenant's estate. While I understand that the tenant's agent considered the landlord's actions disruptive and time-consuming, I am not satisfied that the tenant's agent has demonstrated that these actions contravened either the tenancy agreement or the *Act*. In addition, the tenant's agent has provided estimates of the cost of the trips and not actual receipts to show the actual amount of her monetary loss. I dismiss the tenant's agent's claim for travel expenses without leave to reapply.

I find the tenant's agent's claim for missing food and general cleaning items speculative and based on her estimate of what the tenant usually had in the rental unit. The tenant's agent provided no actual bills or receipts, but her estimates of what the tenant likely had in the rental unit at the time of her death. The landlord provided a reasonable explanation for what was done with opened and unopened items of this nature that were in the rental unit when the landlord's representatives cleaned the rental unit and stored or discarded items. I dismiss the tenant's agent's application for a monetary award for missing food and general cleaning items without leave to reapply.

The tenant's agent has provided multiple descriptions of the tenant's jewellery, much of which the tenant's agent maintained went missing after the landlord's cleaning of the rental unit. The tenant's agent testified that she had no written appraisals or receipts to substantiate her claim for missing jewellery, but said that she believed that the \$200.00 monetary award she was seeking was a conservative estimate of the worth of the tenant's missing jewellery. The landlord noted the discrepancies in the lists and descriptions of the missing jewellery in the tenant's agent's evidence. Without written appraisals or receipts, I do not find that the tenant's agent has submitted sufficient evidence to demonstrate that a monetary award should be issued for this item. I

dismiss the tenant's agent's claim for a monetary award for missing jewellery without leave to reapply.

I will address the issue of rent owing for November 2011 in the context of the landlord's application for a monetary award.

Analysis – Landlord's Application for a Monetary Award

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. There is undisputed evidence that the landlord has not received any rent from either the tenant or the tenant's estate for November 2011, the month after the tenant passed away. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

In this case, the landlord maintained that the enquiries the landlord made revealed that the landlord could not take action to obtain occupancy of the rental premises and re-rent the tenant's unit until after the paid portion of the tenancy expired and 30 days had elapsed since the tenant's passing. It would seem that the landlord has confused the landlord's obligation to store and retain the tenant's personal possessions for safekeeping with its duty to mitigate the losses to the tenant's estate by seeking a new tenant. There is no question that the landlord was aware that the tenant had died. In fact, the tenant's agent entered undisputed written evidence that the landlord's primary representative at this hearing attended the tenant's funeral. The issue of who was entitled access to the tenant's possessions was not clarified until the landlord received notification from the courts regarding the authenticity of the tenant's agent's Letter of Administration and Order. However, once the tenant died, the landlord clearly knew that the tenant would not be requiring the rental unit after October 31, 2012, the final date of her paid rent. The parties agreed that the landlord had a waiting list of prospective tenants, one of whom rented the premises as of November 19, 2011. Under these circumstances, I find that the landlord provided no legitimate reason that prevented the landlord from cleaning and storing the tenant's personal possessions before November 1, 2011 and locating a new tenant to take occupancy of the rental unit by November 1, 2011. As such, I find that the landlord has not taken adequate measures to mitigate the losses to the tenant's estate. Since the landlord has not complied with the provisions of section 7(2) of the *Act*, I find that the landlord is not entitled to any recovery of rental losses for November 2011 from this tenancy. I dismiss the landlord's application for a monetary award for loss of rent from November 1, 2011 until November 18, 2011, without leave to reapply.

Section 37(2) of the *Act* requires a tenant to “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.” Based on a balance of probabilities, I find that some cleaning was necessary at the end of this tenancy and that the landlord has provided sufficient evidence to demonstrate entitlement to the \$30.00 of cleaning claimed in the landlord’s application.

Residential Tenancy Branch Policy Guideline 40 identifies the useful life of items associated with residential tenancies for the guidance of Dispute Resolution Officers in determining claims for damage. Guideline 40 establishes the useful life of an internal paint job at four years. At the hearing, the landlord testified that the rental unit was last painted about four or five years before the tenancy ended. Since the useful life of the existing paint job to the tenant’s rental unit had expired by the end of her tenancy, I dismiss the landlord’s application for a monetary award for repainting her rental unit without leave to reapply.

As the landlord was primarily unsuccessful in the landlord’s application for dispute resolution, the landlord bears responsibility for the landlord’s filing fee.

Conclusion

I issue a monetary Order in favour of the tenant’s agent acting on behalf of the estate of the tenant under the following terms which allows the tenant’s agent a return of double the security deposit and the recovery of her filing fee less the cleaning award issued in the landlord’s favour:

Item	Amount
Return of Tenant’s Security Deposit plus applicable interest (\$125.50 + \$3.88 = \$129.38)	\$129. 38
Monetary Award for Landlord’s Failure to Comply with s. 38 of the <i>Act</i>	125.50
Recovery of Tenant’s Agent’s Filing Fee	50.00
Less Landlord’s Cleaning Costs	-30.00
Total Monetary Order	\$274.88

The tenant’s agent acting on behalf of the tenant’s estate 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: May 16, 2012

Residential Tenancy Branch