



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

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

- a monetary order 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.

The tenant applied for authorization to obtain a return of double his security deposit pursuant to section 38 of the *Act*. Both parties applied to recover the filing fees for their applications from the other party.

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 landlord confirmed that she received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on April 27, 2012. The tenant confirmed that he received the landlord's dispute resolution hearing package the landlord sent on June 7, 2012. I am satisfied that the parties served one another with these packages and their written evidence in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy? Which of the parties is entitled to the tenant's security deposit? Is the tenant entitled to a monetary award equivalent to the amount of his 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 from one another?

Background and Evidence

This tenancy commenced as a periodic tenancy when the tenant and a co-tenant first occupied the rental unit on July 29, 2011. Although there were different versions of this initial periodic tenancy entered into written evidence for this then furnished rental unit, the parties agreed that rent was initially set at \$1,350.00, payable in advance on the first of each month. The tenants were responsible for paying for hydro. The landlord's husband who participated in this hearing was also identified on this tenancy agreement.

The landlord(s) continue to hold the tenant(s)' \$600.00 security deposit paid on August 1, 2011.

Shortly after the tenancy began, the tenant advised the landlord that he had his own furniture and would prefer to revise the initial tenancy agreement to a fixed term tenancy for an unfurnished rental unit. According to the terms of this new fixed term tenancy agreement entered into between the two landlords and the two tenants, monthly rent for this now unfurnished rental unit was set at \$1,200.00, payable in advance on the first of each month. This tenancy agreement started on September 1, 2011 and was to continue until February 28, 2012. The tenancy continued as a periodic tenancy after February 28, 2012.

Although the parties did not supply supporting written evidence, they agreed that the landlord issued the tenant a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) that was to take effect by March 31, 2012. The landlords had sold this property and were planning to transfer ownership to the purchasers on April 4, 2012. The parties also agreed that the tenant vacated the rental premises on April 3, 2012. To comply with the landlord's issuance of the 2 Month Notice, the landlord allowed the tenant to forego the rent payment for March 2012.

The landlord agreed that she received the tenant's forwarding address in writing by way of the tenant's April 3, 2012 letter handed to her that date.

The landlord has not returned any portion of the security deposit, but applied for authorization to retain it in partial payment of the \$730.00 monetary award she is seeking through her application of June 7, 2012.

The landlord's application included a request for a monetary award of \$480.00 for the tenant's failure to pay for the landlord's furniture that he agreed to purchase shortly after the tenancy converted to an unfurnished tenancy agreement. The landlord maintained that the tenant had made enquiries with the landlord and had agreed to purchase this furniture from the landlord by adding monthly payments to his rent cheque. The landlord claimed that she is entitled to a monetary award of \$60.00 for each month of this 8-month tenancy. The landlord agreed that she has no written agreement with the tenant regarding the furniture. The tenant denied having made any such agreement with the landlord.

The landlord's application for a monetary award also included \$200.00 to reimburse her for the disposal of furniture that the tenant left in an area of this strata building where this was not allowed. The parties agreed that the furniture in question was a couch, two

chairs, and two coffee tables. This would appear to be furniture that the landlord claimed to have sold to the tenant earlier in this tenancy. The landlord entered written evidence of a receipt for the removal of these goods on May 4, 2012 at a cost of \$200.00. Both parties maintained that this furniture was owned by the other party. The tenant said that he offered to remove this portion of the landlord's furniture from the balcony of the rental unit as a favour to the landlords as they are much older and would have difficulty moving this furniture. He said that he enlisted the help of friends who were assisting with his move to take these items to the location where used furniture was left for pick-up at this building. The male landlord said that he did not know that the tenant was planning to leave this furniture outside the building where the strata council would impose a fine to remove it.

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 tenant provided his forwarding address in writing on April 3, 2012, the same date that this tenancy ended. I find that the landlord has not returned the security deposit within 15 days of April 3, 2012, nor did the landlord apply for dispute resolution during this 15-day period. Pursuant to section 38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the security deposit plus applicable interest calculated on the original amount only. No interest is payable over this period. As the tenant was successful in his application, I allow him to recover his \$50.00 filing fee from the landlord.

Analysis –Landlord's Application for a Monetary Award

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.

In the landlord's written evidence, the landlord stated that the landlord committed to sell some of the furniture in the rental unit and sell some to the tenant. The landlord claimed that they settled on a \$600.00 price for the furniture that the tenant was purchasing from the landlord, but the tenant never made any payments towards this furniture.

I find that the most recent residential tenancy agreement that was in effect for all but the first month of this tenancy established that this rental was for an unfurnished rental unit. The parties agreed that this tenancy agreement was a fixed term tenancy agreement that covered the period from September 1, 2011 until the end of this tenancy on April 3, 2012. The monthly rent was reduced from \$1,350.00 for the furnished rental unit to \$1,200.00 for the unfurnished rental unit. Although the initial tenancy agreement that formed the basis for the tenants' occupancy of the premises for August 2011 was for a furnished rental unit, there is no reference in the updated tenancy agreement to what was to happen to the landlord's furniture when this modification occurred. Under these circumstances, I find that the landlord's claim that the tenant(s) entered into an oral agreement to purchase the landlords' furniture lies outside the terms of their residential tenancy agreement.

I find that the landlord has not established that whatever oral contractual agreement was entered into by the parties existed as part of their residential tenancy agreement. While the tenant had a simultaneous landlord/tenant relationship with the landlord that does fall within the *Act*, the purchase of furniture was a separate contractual arrangement that the landlord maintained the tenant entered into with the landlord. Under these circumstances, the landlord has the same rights as any other vendor. However, her recourse is not through the *Act* which clearly establishes that a landlord can only seek recourse for monetary awards claimed as a result of a tenant's contravention of the terms of the *Act*, the regulations made under that *Act* and the residential tenancy agreement. I dismiss this portion of the landlord's claim without leave to reapply as she has not established that she is entitled to a monetary award for the tenant's alleged breach of an oral contractual agreement that I find separate from their residential tenancy agreement.

I have also considered the oral and written evidence relating to the landlord's claim that she is entitled to a monetary award for the losses she incurred as a result of the tenant's

failure to properly dispose of furniture that was in the tenant's rental unit. Although I recognize that the ownership of the furniture items remains somewhat in dispute, this does not affect my decision. This is because there is undisputed evidence that the tenant and his friends did remove the furniture items in question and did place these items elsewhere in the strata property. I do not question the tenant's evidence that he removed these items from the rental unit as a favour to the landlords because he had friends coming who could easily help to remove this furniture. Whether or not the furniture in question was the landlord's or the tenant's, the tenant and his friends did take this furniture from the rental unit and place it in an area of the strata property where it was not allowed. The tenant testified that he believed that the location where he left the furniture was in compliance with previous notices he had seen in the building identifying where a non-profit organization would pick up such furniture at no cost.

At the hearing, the male landlord testified that he understood that the tenant was "going to get rid of the furniture" which the landlords considered to be the tenant's. The male landlord testified that the tenant did not say what he was going to do with the furniture and the tenant knew that he could not just leave it on the strata property without making prior arrangements to have it picked up. The male landlord testified that no prior arrangements were made by the tenant regarding the pick-up of this furniture and the strata council advised the landlord that the landlord was at risk of receiving a \$200.00 fine if the furniture were not removed. The landlord submitted copies of a \$200.00 invoice and a receipt for the removal of the furniture in question by a rubbish removal service. Although the tenant questioned why the landlord waited over a month to remove this furniture, I find that this delay has no substantive bearing on whether the landlord did indeed incur losses resulting from the tenant's failure to remove this furniture to a location where costs would not be incurred.

As the person who physically removed the furniture from the rental unit, I find that the tenant bears responsibility for ensuring that arrangements were in place to avoid the landlord's costs of removing the furniture from the location where the tenant and his friends left this furniture. While I sympathize with the tenant's claim that he was doing the landlords a favour by removing the furniture for them, I find that his lack of care in ensuring that he placed the items in a place where the landlord would not incur costs makes him responsible for the losses the landlord subsequently incurred, however well-intentioned the tenant's actions might have been. For this reason, I issue a monetary award in the landlord's favour in the amount of \$200.00, an amount which allows the landlord to recover the losses she incurred as a result of the tenant's actions in removing furniture from the rental unit and placing it in a location where she incurred costs.

As the landlord has been partially successful in her application, I allow her to recover \$25.00 of her filing fee from the tenant.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms which allows the tenant to recover double the security deposit from this tenancy and his filing fee, less the monetary awards issued to the landlord to recover the landlord's losses and part of the landlord's filing fee for her application:

Item	Amount
Security Deposit paid on August 1, 2011	\$600.00
Monetary Award Equivalent to Amount of Security Deposit for Landlord's Failure to Comply with Provisions of s. 38 of the <i>Act</i>	600.00
Less Landlord's Monetary Award for Losses	-200.00
Tenant's Filing Fee	50.00
Less ½ of Landlord's Filing Fee	-25.00
Total Monetary Order	\$1,025.00

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.

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: June 25, 2012

Residential Tenancy Branch