



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD OLC FF

Introduction

This is an application under the *Residential Tenancy Act* (the “Act”) by the tenant for a monetary order for return of double the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The tenant, the husband of the tenant, and the landlord attended the hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

The landlord confirmed receipt of the tenant’s evidence prior to the hearing and that she had the opportunity to review the evidence. The landlord submitted 85 pages of evidence late contrary to the rules of procedure. As a result, the parties were advised that the landlord’s evidence was excluded from the hearing. The landlord was advised that she could provide evidence orally during the hearing as an alternative.

Preliminary and Procedural Matters

At the outset of the hearing, the tenant confirmed that she was reducing her monetary claim from \$3,650.00 to \$2,600.00 due to the fact that since she filed her application she had received her security deposit of \$1,000.00 from the landlord on October 15, 2012. As a result, the tenant’s monetary claim was reduced from \$3,650.00 to \$2,600.00 during the hearing as the amendment did not prejudice the landlord.

The issue of jurisdiction was also addressed at the outset of this hearing. As the tenancy was approximately six months long, this tenancy falls under the jurisdiction of the *Residential Tenancy Act*, and is not a vacation rental as the landlord initially stated at the start of the hearing. The tenant stated that she was never advised that the rental unit was a vacation rental. Therefore, based on the terms of the tenancy agreement between the parties, I find I have jurisdiction to hear this dispute under the *Act*.

Issues to be Decided

- Is the tenant entitled to the return of double the security deposit pursuant to section 38 of the *Act*?
- Is the tenant entitled to a monetary order under the *Act*?
- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

A fixed term tenancy began on April 1, 2012, which reverted to a month to month tenancy on June 23, 2012 as a new fixed term tenancy agreement was not entered into by the parties. Monthly rent in the amount of \$1,600.00 was due on the first day of each month. The landlord requested the tenant pay a \$1,000.00 security deposit at the start of the tenancy, which exceeds the limit of $\frac{1}{2}$ of a month's rent under section 19 of the *Act* and will be addressed later in this decision. The tenant paid a security deposit of \$1,000.00 at the start of the tenancy. The tenant vacated the rental unit on or about September 30, 2012.

The tenant is seeking a monetary order in the amount of \$2,600.00 comprised of the following:

Double security deposit calculated at \$1,000.00 original security deposit X 2	\$2,000.00
Compensation for loss of phone, internet and cable from April 1, 2012 to April 21, 2012 (and loss of phone for the full 6 months of the tenancy)	\$1,600.00
Subtotal	\$3,600.00
Less \$1,000.00 original security deposit returned to tenant by landlord on October 15, 2012	(\$1,000.00)
TOTAL	\$2,600.00

The tenant testified that she moved into the rental unit on April 13, 2012. The parties agree that phone, internet and cable were included in the monthly rent, which is supported by the written tenancy agreement submitted in evidence.

The landlord stated that she was in another country on April 13, 2012 and received a call regarding the tenant having no cable and internet when the tenant moved into the rental unit on April 13, 2012. The tenant disputed the landlord's testimony. The tenant stated that the internet and cable services were restored on April 21, 2012. The parties agree that the phone service was not restored during the tenancy.

The parties agreed that the landlord compensated the tenant for the loss of phone, cable and internet between April 13, 2012 and April 21, 2012 in the amount of \$150.00. The tenant stated that the amount she is claiming of \$1,600.00 is the value she assigned to the loss of having no phone in the rental unit for the full 6 months of the tenancy, and for the loss of internet and cable between April 1, 2012 and April 21, 2012 when the internet and cable service was restored.

The landlord testified that she received an e-mail from the tenant after the first three month fixed term tenancy agreement stating that the tenant was enjoying the unit, and requested to extend the tenancy another three months.

During the hearing, the landlord testified that a forwarding address was not provided by the tenant in writing at the end of the tenancy, nor did the tenant attend for a move-out condition inspection. The tenant testified that her written forwarding address was provided to the landlord in a letter dated September 6, 2012, which was submitted in evidence.

Analysis

Based on the oral testimony, documentary evidence, and on a balance of probabilities, I find the following.

Tenant's claim for return of double the security deposit - Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) **the date the landlord receives the tenant's forwarding address in writing,**

the landlord must do one of the following:

(c) **repay, as provided in subsection (8), any security deposit** or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

[emphasis added]

The landlord testified that the tenant did not provide her written forwarding address at the end of the tenancy. The tenant referred to a letter dated September 6, 2012 as evidence that she provided her written forwarding address to the landlord. The landlord confirmed receiving the letter dated September 6, 2012, on the same date as it was hand delivered by the tenant.

I have examined the letter from the tenant to the landlord dated September 6, 2012. Although the letter contains the PO Box of the tenant at the top of the first page, the letter does not specifically state that the address on the first page is the forwarding address of the tenant. In addition, the letter included email contact information and was sent 24 days before the end of the tenancy, and requested that a security deposit be paid before the end of tenancy, which is not in keeping with the *Act*. Therefore, **I find** the tenant has failed to prove she specifically provided her forwarding address to the landlord.

As a result of the above, and based on the disputed testimony of the parties and in the absence of further evidence from the tenant, **I find** the tenant has failed to prove that the landlord breached section 38 of the *Act*, as the tenant received the full security deposit in the amount of \$1,000.00 on October 15, 2012. Given the above, **I find** the tenant is not entitled to the return of double her security deposit. **I dismiss** this portion of the tenant's application in full due to insufficient evidence, without leave to reapply.

Tenant's claim for loss of phone, internet and cable services – The tenant has claimed \$1,600.00 as compensation for the loss of the internet and cable service between April 1, 2012 and April 21, 2012, and for the phone service between April 1, 2012 and September 30, 2012. The parties agreed that compensation in the amount of \$150.00 has already been paid by the landlord for the loss of internet, phone and cable between April 13, 2012 and April 21, 2012. As the tenant confirmed that she did not move into the rental unit until April 13, 2012, **I find** that the tenant did not suffer a loss

between April 1, 2012 and April 12, 2012 as she was not physically inside the rental unit and is not entitled to any compensation for that time period as a result.

As the parties have already agreed upon compensation of \$150.00 for the dates of April 13, 2012 to April 21, 2012, **I find** that the tenant has already been compensated for the loss of services for those dates as a result and is not entitled to further compensation.

The remaining claim would be the loss of the phone service between April 22, 2012 and the end of the tenancy, September 30, 2012. The tenant did not provide supporting evidence regarding the value of the loss of phone service between April 22, 2012 and September 30, 2012. I reject the tenant's claim that such a loss would be valued at \$1,600.00. I find that the tenant did suffer a loss of the phone service, however, and **I grant** the tenant a nominal monetary award as follows:

Loss of phone service between April 22, 2012 and April 30, 2012	\$5.00
Loss of phone service between May 1, 2012 and May 31, 2012	\$10.00
Loss of phone service between June 1, 2012 and June 30, 2012	\$10.00
Loss of phone service between July 1, 2012 and July 31, 2012	\$10.00
Loss of phone service between August 1, 2012 and August 31, 2012	\$10.00
Loss of phone service between September 1, 2012 and September 30, 2012	\$10.00
TOTAL	\$55.00

I caution the landlord that section 19 of the *Act* states:

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

[emphasis added]

During the hearing the landlord was advised that the maximum security deposit related to this tenancy was \$800.00 and not \$1,000.00. As a result of the landlord's breach of section 19 of the *Act*, **I grant** the tenant the recovery of the full filing fee of **\$50.00**,

which I would have otherwise not granted as the majority of the tenant's application was dismissed.

I find that the tenant has established a total monetary claim of **\$105.00** comprised of \$55.00 for the loss of phone service and \$50.00 for the recovery of the filing fee. **I grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$105.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I grant the tenant a monetary order in the amount of \$105.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I dismiss the remainder of the tenant's application due to insufficient evidence, without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 14, 2012

Residential Tenancy Branch