



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wilson Recovery Society,
50 East Cordova Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD

Introduction

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

- authorization to obtain a return of double his security deposit pursuant to section 38; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;

The landlords did not attend this hearing, although I waited until 10:01 a.m. in order to enable them to connect with this teleconference hearing scheduled for 9:30 a.m. The tenant and his legal counsel (counsel) attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Counsel said that he sent a copy of the tenant's dispute resolution package to the landlords at the last known address they had for the landlords by registered regular parcel mail on February 12, 2013. He provided the Canada Post Tracking Number to confirm this mailing. He testified that he sent the tenant's written evidence package to the landlords by registered regular parcel mail at the same address and to a second address of a law firm that represented GW at one stage in his interaction with that landlord with respect to his representation of other clients in this building on April 25, 2013. Counsel also provided the Canada Post Tracking Number to confirm these mailings. He said that Canada Post's attempts to deliver the above documents to the landlords were unsuccessful as the packages were returned as unclaimed. Counsel stated that he understands that at least some of the landlords may have been placed into receivership, but that the landlords as identified above were the landlords when the tenant resided in the rental unit. Based on the testimony provided by counsel as to the service of documents to the landlords and in accordance with sections 88, 89 and 90 of the *Act*, I am satisfied that the landlords were deemed to have been served with the above packages on the fifth day after their mailing and in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of his 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*. Is the tenant entitled to a monetary award for damages and losses arising out of this tenancy?

Background and Evidence

This periodic tenancy commenced on or about April 22, 2009 for a single occupant room in a hotel in Vancouver's Downtown Eastside. Although there was no written tenancy agreement between the parties, the tenant and his counsel provided evidence that the total monthly rent for this room was set at \$425.00. Of this amount, the Ministry of Social Development paid \$375.00 from the tenant's disability shelter allowance. The tenant testified that the landlord continues to hold his \$212.50 security deposit paid on or about April 22, 2009. This tenancy ended when the tenant vacated the rental unit by March 31, 2011.

The tenant's original claim was for a monetary award of \$6,800.00. At the hearing, counsel said that the amount of this claim was in error because it was based on the tenant moving into the rental property much earlier than April 22, 2009. Counsel reduced the amount of the requested monetary award to \$2,550.00. This amount included a request for a monetary award of \$425.00 due to the landlords' failure to return the tenant's security deposit in accordance with section 38 of the *Act* and a claim of \$2,550.00 for non-pecuniary damages due primarily to the landlords' alleged failure to provide the tenant with an adequate level of accommodation during this tenancy, but also for a one month period of homelessness at the end of this tenancy. The claim of \$2,550.00 was calculated on the basis of an estimated 25% loss of quiet enjoyment and value in the tenancy resulting from the landlords' failure to address concerns about an ongoing and serious rodent infestation, mould, lack of hot water and a range of associated problems with the maintenance of this rental property.

Counsel for the tenant submitted extensive written evidence with respect to municipal reports and orders issued to the landlord(s) about the lack of maintenance and repair conducted by the landlord(s) to this rental property. This evidence included a March 1, 2011 ORDER issued against the landlord(s) by the City of Vancouver and a June 16, 2011 Administrative Report from the City of Vancouver's Chief Building Official to the Standing Committee on Planning and Environment. Both of these documents described a range of bylaw violations, as well as unsafe and unsanitary conditions in this property and another operated by the landlords.

Counsel also cited three other decisions of Dispute Resolution Officers appointed under the *Act* that considered applications by tenants in this building with respect to claims for damages and losses arising out of tenancies in this building. Although counsel correctly noted that these decisions are neither precedent setting nor binding on my consideration of the tenant's application regarding his tenancy, counsel asserted that the conditions reviewed in these earlier decisions were typical of the problems encountered during this tenancy.

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, I find that the landlord has not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing sent by counsel on October 31, 2011. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. There is no evidence that the landlord obtained the tenant's written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double his security deposit with interest calculated on the original amount only. No interest is payable over this period.

Analysis – Application for Damage or Losses Arising out of this Tenancy

Section 28 of the *Act* outlines the protections afforded to tenants to quiet enjoyment of their rental premises. Section 32 of the *Act* establishes a landlord's obligations to repair and maintain a rental property such that it complies with the health, safety and housing standards required by law and to be maintained to a reasonable state of health, cleanliness and sanitary standards.

In addition to other damages, an arbitrator may award aggravated damages. An arbitrator may award aggravated damages for pecuniary losses such as property, money, services, as well as non-pecuniary losses for the loss of entitlements to comfort or quiet enjoyment afforded under the *Act*. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are also considered "non-pecuniary" losses. Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's wilful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

RTB Policy states that an arbitrator may award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss proven, but they are an affirmation that there has been an infraction of a tenant's legal rights.

I find the tenant has failed to supply sufficient evidence to support a finding that he has suffered a loss in the value of his tenancy of \$2,550.00. However, based on the undisputed evidence before me, I accept that the tenant did suffer some loss of quiet enjoyment during this tenancy with respect to the condition of the rental premises the landlord committed to rent him. Tenants have a right to expect a landlord to live up to his/her responsibility to ensure rental units meet "health, safety and housing standards" established by section 32 of the *Act* and that rental units are reasonably suitable for occupation given the nature and location of the property. I find that the tenant provided sworn oral testimony and his counsel supplied detailed written evidence to demonstrate that the landlords failed to provide an adequate standard of housing to the tenant during at least a portion of his tenancy.

The undisputed evidence in this case is that the tenant was forced to live with insect, mice and rat infestations and the landlord made unreasonable demands on him (e.g., forcing him to obtain his prescriptions from the landlord; preventing him from bringing guests to his room). Needed repairs were ignored by the landlords and the tenant encountered living conditions and shared bathrooms that were well below the standards for such accommodations. The tenant testified that hot water was unavailable, sometimes for a few days in a row.

At the hearing, the tenant testified that conditions deteriorated considerably after he took occupancy of the premises. He testified that he "started" to encounter problems after living in the rental unit for five or six months. He said that he spoke to the Landlord GW and his son who assisted his father with operating this rental property three or four times about the need for repairs and to maintain the property. He testified that he was

told to speak with Landlord GW who told him he would take action later, but this did not occur. The tenant said that he never put any of his concerns in writing to the landlord(s).

I find that the tenant and his counsel have provided undisputed evidence that the disruptions and problems caused by the landlords' failure to properly maintain the rental property as required were considerable and led to hardship for the tenant. Based on the undisputed evidence provided by the tenant, I find that the tenant is entitled to a monetary award enabling him to recover 25% of the rent he paid for this tenancy from the sixth month of his tenancy, when he said conditions significantly deteriorated, until the tenant vacated the premises by March 31, 2011. This results in a 17 month period of reduced rent (i.e., October 2009 until March 2011). The total amount of this monetary award for his loss of quiet enjoyment and for the landlords' failure to provide him with the full value of the facilities and services they committed to provide as part of this tenancy agreement is \$1,806.25 (i.e. $\$425.00 \times 25\% \times 17 \text{ months} = \$1,806.25$).

I make no award with respect to the tenant's claim for a month of homelessness as I am neither satisfied that the tenant has established entitlement to this claim, nor were the details of this portion of the tenant's claim adequately submitted in a way that would have afforded the landlords an adequate opportunity to address them. As the tenant is now beyond the time period for submitting a new application to obtain a monetary award for "a month of homelessness", I dismiss this portion of the tenant's application without leave to reapply.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to recover his security deposit, to obtain a monetary award for the landlords' failure to comply with section 38 of the *Act* and to obtain a monetary award for damages and losses arising out of this tenancy.

Item	Amount
Return of Security Deposit	\$212.50
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	212.50
Monetary Award for Damages and Losses Arising out of this Tenancy ($\$425 \times 25\% \times 17 \text{ months} = \$1,806.25$)	1,806.25
Total Monetary Order	\$2,231.25

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order 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.

I dismiss the remainder of the tenant's application without leave to reapply.

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 17, 2013

Residential Tenancy Branch

