



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 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 his security deposit due to the landlord's failure to comply with section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

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 the tenant handed him a copy of the tenant's dispute resolution hearing package on October 2, 2013. I am satisfied that the tenant served the hearing package to the landlord in accordance with the *Act*. I am also satisfied that the parties served on another with their written and, in the case of the landlord, his photographic evidence, in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award equivalent to one month's rent due to the landlord's alleged failure to comply with the requirement set out in section 51(1) of the *Act* whereby a landlord who issues a notice to end tenancy for landlord's use of the rental premises pursuant to section 49 of the *Act* is required to reimburse the tenant the equivalent of one month's rent? Is the tenant entitled to a monetary award for the return of a double 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 recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on February 15, 2012, as a fixed term tenancy that was scheduled to end on December 31, 2012. At the expiration of the initial term, the tenancy continued as a periodic tenancy until the tenant vacated the rental unit on July 8, 2013.

Monthly rent was set at \$1,400.00, payable in advance on the first of each month. The tenant paid a \$700.00 security deposit on February 15, 2012. The landlord has returned \$511.00 of that security deposit, but has retained the remaining \$189.00 to compensate the landlord for cleaning the carpets, an activity that was not undertaken at the end of this tenancy.

The landlord testified that no joint move-in condition inspection of the rental unit was conducted at the beginning of this tenancy. Although the landlord conducted his own inspection of the rental unit at the end of this tenancy, he did not create a move-out condition inspection report of his July 8, 2013 of the rental unit. He provided no evidence that he sent the tenant two written requests to conduct a joint condition inspection of the rental unit at the end of this tenancy.

The tenant's application for a monetary award of \$1,780.85 included the following items listed in his application for dispute resolution:

Item	Amount
Monetary Award for Landlord's Failure to Compensate him Pursuant to s. 51(1) of the <i>Act</i> – Recovery of 1 Month's Rent	\$1,400.00
Return of Amount Withheld by Landlord for Carpet Cleaning	189.00
Recovery of Losses Incurred in Purchasing a Bathroom Cabinet for the Rental Unit	141.85
Recovery of Filing Fee for this Application	50.00
Total Monetary Order Requested	\$1,780.85

The tenant provided sworn testimony and written evidence that the landlord made an oral request on June 28 or 29, 2013, that the tenant vacate the rental unit by August 1, 2013, so as to enable the landlord's parents to move into the rental unit. The tenant maintained that he had received only one month to vacate the rental unit, when the landlord's reason for seeking an end to this tenancy should have been addressed through the issuance of a 2 Month Notice to End Tenancy for Landlord's Use of Property (a 2 Month Notice). Since the tenant considered himself to have been given an oral 2 Month Notice, the tenant maintained that he was entitled to a monetary award of \$1,400.00 to compensate him pursuant to the provisions of section 51(1) of the *Act*. The tenant submitted undisputed written evidence that he paid a pro-rated amount of \$427.50 in rent for July 2013 to compensate the landlord for 9 days of rent for July 2013.

The parties agreed that the tenant gave the landlord his forwarding address in writing on July 8, 2013, the same day he vacated the rental unit. The tenant objected to the landlord's withholding of \$189.00 from his security deposit for cleaning the carpets in the rental unit. Although neither party entered a copy of the Residential Tenancy Agreement (the Agreement) between the parties into written evidence, the landlord's agent (the agent) testified that section 7 of that Agreement required the tenant to shampoo the carpet at the end of this tenancy. The tenant did not deny the landlord's claim that he failed to shampoo the carpets at the end of this tenancy. However, the tenant maintained that the \$189.00 charge for shampooing the carpets was excessive, given that the landlord hired a carpet cleaning firm based in another municipality which charges travel time to and from the Vancouver location where they were undertaking the carpet cleaning. He said that had he known the landlord intended to charge him \$189.00 for this task, he would have made arrangements to shampoo the carpets himself. The agent disputed this claim as she noted that the tenant had alternate plans immediately after this tenancy ended and was unavailable to conduct any carpet cleaning.

The tenant testified that the landlord gave his oral agreement to compensate the tenant for his purchase of a bathroom cabinet from IKEA shortly after this tenancy began. The tenant submitted a copy of the February 28, 2012 charge he incurred to his credit card for this purchase. The landlord testified that he never agreed to pay for this purchase. The agent said that the tenant left many things behind at the end of his tenancy and was welcome to retrieve this item at the end of the tenancy when he returned to pick up other belongings he had left behind. The tenant did not retrieve this item from the rental unit.

Analysis

As I noted at the hearing, the *Act* requires that any notice to end a tenancy must be issued in writing. For notices issued by landlords, section 52(e) of the *Act* requires that the landlord must use the approved form issued by the RTB to end a tenancy. As there is undisputed evidence from both parties that the landlord did not issue any written notice to end this tenancy on the approved RTB form, I find that this tenancy did not end on the basis of a notice to end tenancy issued by the landlord. Consequently, the provisions of section 51(1) of the *Act* do not apply. No notice to end tenancy pursuant to section 49 of the *Act* has been issued by the landlord. For these reasons, I dismiss the tenant's application for a monetary award for an amount equivalent to one month's rent as set out in the Agreement without leave to reapply.

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."

The following provisions of Policy Guideline 17 of the RTB's Policy Guidelines would also seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

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. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The agent confirmed that the landlord has not obtained the tenant's written authorization at the end of the tenancy to retain any portion of the tenant's security deposit. The tenant testified that he has never specifically waived his right to claim for double the value of his security deposit.

The tenant did not dispute the landlord's claim that he did not shampoo the carpet as required by section 7 of the Agreement. Rather, his dispute was with the amount

charged by the landlord for undertaking this activity. Section 7(2) of the *Act* places a responsibility on a landlord to mitigate losses arising out of a tenant's actions or omissions that would lead to a monetary award for a landlord. In this case, I accept the tenant's undisputed claim that the landlord incurred additional costs beyond those which would normally be charged for cleaning the carpets by choosing to retain a company that charged travel time, which in this case would have been considerable. The rental unit is located in Vancouver. I find that there would be no shortage of companies to perform this task without having to agree to pay the cleaners for travel time to drive from the suburbs to Vancouver.

Section 38(4)(b) of the *Act* reads in part as follows:

(4) A landlord may retain an amount from a security deposit...if...

(b) after the end of the tenancy, the director orders that the landlord may retain the amount...

Under these circumstances and in accordance with sections 7(2) and 38(4)(b) of the *Act*, I only allow the landlord to retain \$139.00 of the \$189.00 in carpet cleaning costs he incurred at the end of this tenancy as I find that the landlord has not fully mitigated the losses he incurred for carpet cleaning.

In accordance with sections 38(4)(b) and 38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the security deposit with interest calculated on the original amount only, less the \$139.00 deduction for carpet cleaning. No interest is payable over this period. From this award is also deducted the \$511.00 already returned to the tenant.

Although I have given the tenant's application for the recovery of the funds he spent on a bathroom cabinet careful consideration, I find that the tenant has not produced sufficient evidence to demonstrate that the landlord agreed to reimburse him for this item. In this regard, the tenant testified that his recollection of the details surrounding this item are affected by the passage of time as he purchased this item shortly after this tenancy began. He said that he had nothing in writing from the landlord that would confirm that the landlord agreed to reimburse him for this item. He also testified that he did not pursue this matter with the landlord until the end of his tenancy. He did not enter into written evidence any actual receipt for this item, but submitted an entry from his credit card summary to support his claim. The agent testified that the tenant made no attempt to retrieve this item when he returned to obtain other items he left behind at the end of this tenancy. For these reasons, I dismiss the tenant's application for recovery of his losses with respect to his purchase of a bathroom cabinet without leave to reapply.

As the tenant has been partially successful in his application, I allow him to recover one-half of his \$50.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant an award of double his security deposit, less the amount already returned to him and the amount allowed the landlord for carpet cleaning, plus the recovery of one-half of his filing fee.

Item	Amount
Return of Double Security Deposit (\$700.00 + \$700.00= \$1,400.00)	\$1,400.00
Less Amount Returned to Tenant by Landlord	-511.00
Less Amount to be Retained by Landlord pursuant to s. 38(4)(b) of the <i>Act</i> for Carpet Cleaning	-139.00
Recovery of ½ of Filing Fee for this Application	25.00
Total Monetary Order	\$775.00

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.

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: December 10, 2013

Residential Tenancy Branch

