



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, 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 her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The landlords did not attend this hearing, although I waited until 3:00 p.m. in order to enable them to connect with this teleconference hearing scheduled for 2:30 p.m. The tenant and her husband attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Issues – Tenant's Service of Documents

Although it was difficult to understand what the tenant and her husband were saying at times during this hearing due to their limited command of the English language, they were able to make themselves understood to the extent necessary for me to consider the tenant's application for dispute resolution.

The tenant gave sworn testimony and written evidence to demonstrate that she sent the landlords a copy of her dispute resolution hearing package by registered mail on March 21, 2014. She provided a copy of the Canada Post Customer Receipt including the Tracking Number. Based on the evidence submitted by the tenant and in accordance with sections 89(1) and 90 of the *Act*, I find that the landlords were deemed served with a copy of the tenant's dispute resolution hearing package on March 26, 2014, the fifth day after its registered mailing.

The tenant testified that she sent the landlords a copy of her written evidence, including emails, texts, receipts and a photograph by courier and by fax on April 24, 2014. She was unable to send these documents by registered mail as she and her husband moved

back to Japan after she left British Columbia on March 24, 2014. She entered into written evidence copies of the return air ticket she purchased prior to her travel to British Columbia on March 15, 2014, at which time she had planned to remove the remainder of her belongings from the rental unit. She provided the courier invoice number to confirm how she gave her written evidence to the landlords.

Section 88 of the *Act* establishes how documents to be considered at a dispute resolution hearing may be served. While a range of methods for serving documents are identified in this section, many of these presume that the party serving the evidence remains in Canada and can serve the documents either directly or through ordinary mail or registered mail. I find that the circumstances before me are unusual in that the tenant returned to Japan two days after she filed her application for dispute resolution. Once the tenant obtained all of her receipts and documents, she was in no position to send these to the landlords by the Canada Post registered mail system as she was outside North America by that time. Under the circumstances, the tenant appears to have taken reasonable steps to send her documents to the landlords in what would appear to be the closest similar service to registered mail available to her, by sending these by one of the largest international courier services. She also gave undisputed sworn testimony that she faxed these documents to the landlords to a fax number provided to her by the landlords during her tenancy. Section 88(h) of the *Act* allows a tenant to serve written evidence to landlords by transmitting them to a fax number provided by the landlords. For these reasons, I am satisfied that the tenant has served the landlords with her written evidence in accordance with section 88 of the *Act*. I have considered this written evidence in reaching my decision regarding her application.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for damages and losses arising out of this tenancy? Is the tenant entitled to a monetary award for the return of the security deposit for this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

Although the tenant entered into written evidence some of the pages of the written Residential Tenancy Agreement (the Agreement), she did not submit a copy of the first page of that Agreement in which the monthly rent and terms would normally be shown. At the hearing, the tenant gave sworn testimony that this was a one-year fixed term tenancy commencing on April 13, 2013. She said that it was scheduled to end by April 30, 2014. She said the monthly rent was set at \$1,600.00, payable in advance on the first of each month. She provided a copy of the page of the Agreement, which noted that she paid her \$800.00 security deposit to the landlords on April 13, 2013. She

testified that she has not received a return of her security deposit at the end of this tenancy.

The tenant testified that she and her husband travelled to Japan to be with a sick family member on December 28, 2013. The tenant gave sworn testimony, supported by some written evidence, that on or about February 15, 2014, she sent her notice to end this tenancy to the landlords by email. From her email, it would appear that she initially planned to leave by mid-March 2014, but later advised the landlord that she was planning to end her tenancy by March 31, 2014.

The tenant testified that the landlord cashed her rent cheques for both February and March 2014. Although the tenant was not certain as to when the landlords changed the locks on the rental unit, she testified that the locks had been changed and she was denied entry to the rental unit by the time she returned from Japan on March 15, 2014. She asked for the recovery of rent she paid in February and March 2014. She also asked for the recovery of the \$2,936.12 in hotel bills she accumulated between March 15, 2014, when she returned to British Columbia, and March 23, 2014, her final night in this province. She gave sworn oral testimony and written evidence that she had moved most of her belongings out of the rental unit and placed them in paid storage prior to leaving for Japan on December 28, 2013.

The tenant's application for a monetary award of \$7,000.00 included the following items listed on the Monetary Order Worksheet she submitted into written evidence:

Item	Amount
Recovery of Rent Paid for February 2014	\$1,600.00
Recovery of Rent Paid for March 2014	1,600.00
Return of Security Deposit	800.00
Hotel Accommodation Charges from March 15 – March 23, 2014	2,936.12
Recovery of Insurance Charges February and March 2014	98.34
Canada Post Mailing Costs	10.33
Total of Above Items	\$7,044.79

The tenant also applied to recover her \$100.00 filing fee from the landlords.

Analysis

Section 7(1) of the *Act* establishes that a party who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the other party for damages or losses that result from that failure to comply. Section 67 of the *Act* establishes that if

damages or losses result from a tenancy, an Arbitrator 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 this case, the onus is on the tenant to prove on the balance of probabilities that the tenant caused the damage or loss.

Section 45(1) of the *Act* requires a tenant, even in a periodic tenancy to give the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for March 2014, the tenant would have needed to provide her notice to end this tenancy before March 1, 2014. Section 52 of the *Act* requires that a tenant provide this notice in writing.

In this case, I find that the tenant gave sworn testimony and written evidence that she did not provide proper written notice to the landlords of her intention to end this tenancy before April 31, 2014. I find that the tenant's emails do not meet the requirement under section 52 of the *Act* that her notice to end this tenancy must be in writing. Furthermore, I find that the tenant's emails were vague and appear to have changed the date when she was planning to end this tenancy. I also find that the tenant acted on the assumption that the landlords had agreed to let her end her tenancy by March 31, 2014. I see no such agreement by the landlords to allow the tenant to change her earlier request to leave the tenancy sometime earlier in March 2014. The tenant returned from spending 2 ½ months outside the country expecting that the landlords had agreed to her emailed request to end the tenancy on March 31, 2014, instead of earlier that month.

While the tenant did not end her tenancy in the way required by the *Act*, there is also undisputed evidence before me that this tenancy actually ended when the landlords changed the locks on the tenant's door after cashing her rent cheque for March 2014. By cashing the tenant's cheque, I find that the landlords accepted that the tenancy was to continue until at least March 31, 2014, unless the landlords obtained an Order of Possession from an Arbitrator appointed under the *Act* to enable them to end this tenancy before March 31, 2014. There is no indication before me that the landlords obtained any such Order of Possession.

Although the tenant clearly intended to breach the terms of her Agreement by ending her tenancy before the April 31, 2014 date specified in that Agreement, I find that the landlords breached the terms of this Agreement when they changed the locks on the

tenant's door. Although the timing of the landlords' changing of the locks is uncertain, the tenant gave undisputed sworn testimony and written evidence that the landlords ended this Agreement by March 15, 2014, when she returned to the rental unit and found the locks changed and her access to the rental unit denied. On this basis, I find that the landlords ended this Agreement and any obligations they were entitled to receive in accordance with this Agreement on March 15, 2014.

Since the tenant was not affected by the landlords' actions in changing the locks to the rental unit until March 15, 2014, I find that the tenant's eligibility to compensation for losses arising out of this tenancy does not begin until that date. Based on the undisputed evidence before me and on a balance of probabilities, I find that the tenant is entitled to recover \$877.42 ($\$1,600.00 \times 17/31 = \877.42), an amount representing the 17 days of March 2014, following March 14, 2014, when the landlords prematurely ended this tenancy.

I dismiss the tenant's application for the recovery of rent from February 2014 and for the first 14 days of March 2014, without leave to reapply. I do so as the tenant has not demonstrated that she incurred any actual losses resulting from any potential action taken by the landlords with respect to the tenant's payment of rent. I find that the tenant was not in the country over this period and was in no way directly affected by the landlords' actions until she returned on March 15, 2014.

I have also carefully considered the tenant's application for a monetary award of \$2,936.12 in hotel bills she accumulated over the 9-day period from March 15, 2014 until she left the province on March 24, 2014. The tenant's claim for hotel accommodations over this period results in a daily charge of \$325.12. The award to the tenant for that portion of March following the landlords' termination of the Agreement left her with \$877.42, which can be applied to the tenant's accommodation costs for the 9-day period from March 15 until March 24, 2014. On a daily rate, this allows the tenant \$97.49 which could be applied to her daily hotel charges for the period before she was scheduled to return to Japan.

Section 7(2) of the *Act* places a responsibility on a party claiming compensation for loss resulting from the other party's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. In this regard, I find that the tenant's decision to stay at a Hilton Hotel, as opposed to some more economical alternative, does not demonstrate her full compliance with section 7(2) of the *Act*. However, returning as she did on March 15, 2014 and discovering that the rental unit where she was expecting to stay was unavailable to her may have left her with reduced options for short term accommodations over this period. I accept that she could not likely have been able to

find suitable accommodations in this municipality on such short notice for \$97.49, the amount that could be applied from the monetary award for rent paid during the last portion of March 2014. Under the circumstances, I find that a more reasonable daily room rate of \$150.00 could have been obtained by the tenant for the nine days in question in order to comply with the requirements of section 7(2) of the *Act*. For these reasons, I allow the tenant an additional monetary award of \$472.59 (i.e., $9 \times (\$150.00 - \$97.49) = \$472.59$) for hotel accommodations for the period from March 15, 2014 to March 23, 2014.

I find no basis for the tenant's claim for the recovery of tenant's insurance costs she submitted as part of her application. I am not satisfied that the landlord's decision to end this tenancy 17 days before the tenant intended to end this tenancy led to any additional costs for which the tenant is eligible to reimbursement. I dismiss her application for this item without leave to reapply.

The only portion of the costs associated with filing an application for dispute resolution that a party can recover is the filing fee. As the tenant has been partially successful in this application, I allow her to recover \$50.00 of her filing fee from the landlords. I dismiss the tenant's application to recover her mailing costs 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 security 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 in writing. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security 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." As there is no evidence that the tenant has given the landlords written authorization at the end of this tenancy to retain any portion of his security deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

In this case, the tenant testified that her only provision of her forwarding address to the landlord was by way of the documents she provided in her dispute resolution hearing package. Provision of a forwarding address in this way does not invoke the provisions

of section 38(6) of the *Act* requiring the payment of double the security deposit to the tenant.

Under these circumstances, I order the landlord to return the \$800.00 security deposit to the tenant. No interest is payable over this period.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to recover a portion of the rent paid for this tenancy, additional expenses incurred arising out of this tenancy and for the filing fee for this application, and to return the tenant's security deposit:

Item	Amount
Recovery of a Portion of the Rent Paid for March 2014	\$877.42
Eligible Hotel Accommodation Charges	472.59
Return of Security Deposit	800.00
Portion of Filing Fee	50.00
Total Monetary Order	\$2,200.01

The tenant is provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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 15, 2014

Residential Tenancy Branch

