



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 all or a portion of his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1:26 p.m. in order to enable her to connect with this teleconference hearing scheduled for 1:00 p.m. The tenant and his wife attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant testified that he sent the landlord a copy of his dispute resolution hearing package, including the application for dispute resolution and notice of this hearing, by registered mail on June 12, 2014. He provided the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. In accordance with sections 89(1) and 90 of the *Act*, I find that the landlord was deemed served with the tenant's dispute resolution hearing package on June 17, 2014, the fifth day after its registered mailing. The tenant also testified that he sent the landlord a copy of his written evidence package by registered mail on September 19, 2014, which I also accept was deemed served to the landlord on the fifth day after its mailing.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses or damages arising out of this tenancy? Is the tenant entitled to a monetary award equivalent to double the value 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 recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began as a one-year fixed term tenancy agreement on May 1, 2012. At the expiration of the initial term, the tenancy converted to a periodic tenancy until the tenant vacated the rental unit on or about March 10, 2014. According to the terms of the Residential Tenancy Agreement (the Agreement) entered into written evidence by the tenant, monthly rent was set at \$1,050.00, payable in advance on the first of each month, plus utilities. The tenant testified that he paid rent for the entire month of March 2014, the last month of his tenancy. The landlord continues to hold the tenant's \$500.00 security deposit paid on May 1, 2012.

The tenant's written evidence included copies of a number of decisions of Arbitrators appointed under the *Act* with respect to this tenancy. A December 11, 2013 decision of one of these Arbitrators reported the terms of a settlement agreement between the parties in accordance with section 63 of the *Act*. The Arbitrator noted that both parties agreed to mutually end the tenancy on March 31, 2014. The Arbitrator issued an Order of Possession to the landlord to be used in the event that the tenant did not vacate the rental unit by that time. The Arbitrator also reported that "Both parties agreed that the Landlord shall make a \$500.00 payment to the Tenant upon completion of the Tenant vacating the rental unit to help cover the Tenant's moving expenses." The Arbitrator issued a \$500.00 monetary Order in the tenant's favour to give effect to the settlement agreement reached between the parties to be used in the event that the landlord did not abide by these terms of settlement. The tenant did not attach a copy of that monetary Order with his current application for dispute resolution. At the hearing, the tenant gave no indication that he had already received this \$500.00 monetary Order from the Arbitrator who heard this matter on December 11, 2013.

The tenant's current application for a monetary Order of \$1,617.50 included the following items:

Item	Amount
Return of Security Deposit	\$500.00
Monies Owed due to Previous Dispute	500.00
Monies Owed due to Illegal Entry to the Property, Tampering with Personal Property and Loss of Quiet Enjoyment (6.5 hours @ \$95.00 per hour = \$617.50)	617.50
Total of Above Items	\$1,617.50

The tenant gave undisputed sworn testimony and written evidence that he sent the landlord a registered letter on March 10, 2014 in which he advised her that he had

vacated the rental unit and that any mail to him could be sent to the dispute address for the next year as he had arranged to have Canada Post forward all mail to him.

Analysis

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 in full 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.

Based on the undisputed evidence before me, I find that the landlord was deemed served with the address where the landlord could send his mail, including a return of the security deposit, on March 15, 2014, the fifth day after its registered mailing. I further find that the landlord had 15 days after March 15, 2014 to take one of the actions outlined above. 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 landlord 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.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would 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.*

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenant gave sworn oral testimony that he has not waived his right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a monetary order amounting to double the value of his security deposit with interest calculated on the original amount only. No interest is payable over this period.

I have also considered the tenant's application for a monetary award of \$500.00 to compensate him for the landlord's failure to abide by the terms of the December 11, 2013 settlement agreement. Although I noted at the hearing that I was inclined to issue the tenant the requested \$500.00 monetary award for this item, I made this statement on the basis of my understanding that there had been no monetary Order issued by the previous Arbitrator to give effect to this term of the December 11, 2013 settlement agreement. Subsequent to the hearing, I discovered that the tenant has already received a final and binding monetary Order in the amount of \$500.00 for this item, which remains in effect and can be enforced through the Small Claims Division of the Provincial Court of B.C.

The legal principle of *res judicata* applies in this circumstance, meaning the matter has already been conclusively decided and cannot be decided again. I dismiss this element of the tenant's application without leave to reapply as I clearly cannot issue a second monetary Order for an item already finally and conclusively provided to the tenant by a previous Arbitrator appointed under the *Act*.

Section 28 of the *Act* establishes a tenant's right to quiet enjoyment, including the rights to:

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];...*

Much of the tenant's written evidence centered on his allegation that the landlord made a series of attempts to gain permission to access his rental unit, particularly during the latter stages of this tenancy, when the landlord was attempting to sell this property. The tenant maintained that the landlord illegally entered the premises on a number of occasions, which on at least one instance prompted the tenant to have the police attend. The tenant gave sworn testimony that the police advised him that he may have grounds to proceed with a charge of mischief against the landlord.

Subsections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement." Based on the tenant's undisputed sworn testimony and written evidence, I find that the tenant has established his entitlement to a monetary award for the reduced value of this tenancy agreement due to the landlord's actions which caused a loss of quiet enjoyment during this tenancy.

However, I do not accept that the tenant's loss of quiet enjoyment was of the magnitude maintained by the tenant. When questioned as to how he calculated the \$617.50 he was claiming for this item, the tenant responded that he had included the time that he had spent associated with the dispute resolution process in his calculations. As noted above, the tenant asked for reimbursement at the rate of \$95.00 per hour for the time he spent dealing with problems that he maintained were caused by the landlord and which required the tenant to apply for dispute resolution. At the hearing, I advised the tenant that the only charge that he would be able to recover from the dispute resolution process would be his \$50.00 filing fee for his application, which I have allowed.

Although I dismiss the tenant's claim for the recovery of the time he devoted to pursuing this matter through the dispute resolution process, I do accept that there has been a loss of some value in this tenancy agreement due to the landlord's actions. As the alleged incidents appear to have escalated to the extent that a reduction in the value of this tenancy occurred during the final stages of this tenancy, I limit the monetary award for the loss in value of his tenancy due to the landlord's contravention of the tenant's right to quiet enjoyment to \$100.00, an amount I find commensurate with the loss the tenant has demonstrated his entitlement to receive.

Having been successful in this application, I find further that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which enables him to obtain a return of double his security deposit, an amount for his loss of quiet enjoyment of the premises, and the recovery of his filing fee:

Item	Amount
Return of Double Security Deposit as per section 38 of the Act (\$500.00 x 2 = \$1,000.00)	\$1,000.00
Loss of Quiet Enjoyment and the Value of the Tenancy	100.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,150.00

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: October 20, 2014

Residential Tenancy Branch

