



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF, O; MNSD, FF, O

Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial
- authorization to recover her filing fee for this application from the tenant pursuant to section 72; and
- an "other" remedy.

This hearing also dealt with the tenant's application pursuant to the Act for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- compensation for the landlord's failure to return the tenant's security deposit pursuant to subsection 38(6) of the Act; and
- an "other" remedy.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant was accompanied by her advocate.

Preliminary Issue – Scope of Application

Neither the tenant nor the landlord could articulate what "other" remedy they were seeking. As neither party could explain what they sought, both claims for "other" remedies are dismissed with leave to reapply should either party determine what she was seeking.

Preliminary Issue – Service of Documents

The tenant testified that she served the landlord with the dispute resolution package (including the evidence before me) on 30 January 2015 by registered mail. The tenant provided me with a Canada Post customer receipt that showed the same. The landlord acknowledged service of these documents. On the basis of this evidence, I am satisfied that the landlord was served with the dispute resolution package pursuant to section 89 of the Act.

The landlord testified that she served the tenant with the dispute resolution package on 24 March 2015 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. The landlord sent the mailing to the address for service set out on the tenant's application for dispute resolution. This address is not the same as the forwarding address provided by the tenant. The tenant testified that she did not receive the registered mailing. The tenant testified that she no longer resided at that address.

Pursuant to subsection 89(1) of the Act, the landlord's application for dispute resolution may be given in one of the following ways:

- (1) An application for dispute resolution ... when required to be given to one party by another, must be given in one of the following ways:
 - (a) by leaving a copy with the person;...
 - (c) by sending a copy by registered mail to the address at which the person resides or, ...
 - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;...

The address the landlord used for service does not comply with the rules set out in subsection 89(1) of the Act as the tenant did not reside at the address and it was not the address provided by the tenant as a forwarding address.

I explained to the parties at the hearing that the options were to either adjourn or have the tenant consent to proceeding on the basis of my explanation of the landlord's application.

I read out the contents of the landlord's application to the tenant. The landlord's evidence included a copy of the tenancy agreement, which the tenant had also submitted. The landlord's evidence also included two letters. I read the content of each letter to the tenant and her advocate.

I set out that my preference was to adjourn the hearings so that both parties could provide their evidence to the other party and to me. The landlord expressed her desire to proceed with both applications today. I explained the risks of proceeding to the tenant and her advocate. The tenant and her advocate discussed the tenant's options privately. After considering the risks, the tenant elected to accept service of the documents and proceed with both applications today.

As the tenant has waived service, I proceeded with both applications.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award for the return of a portion of her security deposit? Is the tenant entitled to a monetary award equivalent to the amount of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

The tenant filed her claim 15 January 2015. The landlord filed her claim 24 March 2015.

This tenancy began 1 January 2015. Monthly rent of \$800.00 was payable on the first. The landlord collected a security deposit in the amount of \$400.00 at the beginning of the tenancy. The tenant testified that both she and the cotenant each contributed \$200.00 towards this security deposit.

There is a written tenancy agreement in respect of this tenancy. The tenant and her cotenant entered into the tenancy agreement with the landlord. The tenant and cotenant were cohabiting, but the relationship ended at some point in the tenancy.

On 25 November 2014, the tenant provided her forwarding address to the landlord. The tenant provided me with a copy of this letter:

I [tenant] give 1 month notice to vacate [rental unit]. My forwarding address is [forwarding address].

[tenant's signature]

The landlord testified that the tenant actually provided this letter on 6 December 2014. The tenant testified that she placed this letter in the landlord's mailbox. The tenant testified that she vacated the rental unit at the end of November.

On 14 December 2014 the landlord compiled a list of the damage that she alleges:

3 copies

Dec 14 2014

List of damages to basement suite at [address]:

2 new hot plates

1 broken chair (wood)

1 mattress – blood stained + slept on without sheet

[cotenant signature]

[landlord signature]

<i>Replacing mattress</i>	<i>600-</i>
<i>1 chair</i>	<i>200-</i>
<i>2 hot plates</i>	<i><u>60-</u></i>
	<i>860</i>

Deposit \$400

Damage 860

Bal you owe \$360

The landlord and cotenant (and his new roommate LD) entered into a new tenancy agreement 1 January 2015.

The tenant testified that the landlord told the tenant that there was damage to a hotplate, a chair, and a mattress and that the tenant would not be receiving her damage deposit back.

On 23 March 2015 the cotenant signed a letter prepared by the landlord:

Received from [landlord] four hundred dollars (400.xx) security deposit for Jan-Dec 2014 basement suite at [rental unit address]. I am returning it to her for damage to the bed, chair and hot plates.

There is no condition move in or move out inspection report completed in respect of this tenancy.

The tenant claims only claims in respect of her portion of the security deposit, that is \$200.00.

Analysis

I find that the tenant provided her forwarding address to the landlord on 6 December 2014. I find that the tenancy ended 31 December 2014 as the landlord entered into a new tenancy with new tenants as of 1 January 2015.

The landlord claims for damages against the tenant to a mattress, a chair and a hotplate. The condition move in and move out inspection reports were not completed in respect of this tenancy. The landlord has provided me with a letter signed by the cotenant purporting to indicate that he relinquished the tenant's rights to the security deposit.

Section 38 of the Act sets out relevant rules dealing with security deposits:

- 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...
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
- (a) 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, ...
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.
- (6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable...

The landlord did not complete a condition move-in or move-out inspection with the tenant. Accordingly, her right to claim against the security deposit was extinguished by this failure pursuant to both subsection 24(2) and 36(2). Thus, the landlord could not retain amounts pursuant to paragraph 38(4)(a) even if the cotenant agreed to it in writing because of the operation of subsection 38(5) of the Act. This extinguishment would not prevent the landlord from claiming in damages for the amounts.

The landlord has alleged that she sustained losses result of the tenant's actions. To be successful in such a claim, the landlord must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the tenant. The landlord has not provided me with any receipts or documentary evidence (such as photographs) of the alleged damage. Through her failure to provide any documentary evidence to substantiate her claim, I find that the landlord has failed to show, on a balance of probabilities, that she sustained the damages of which she complains or the quantum of her loss.

The landlord's application is dismissed without leave to reapply.

As the landlord was not successful, she is not entitled to recover her filing fee from the tenant.

The landlord is not entitled to retain any amount from the security deposit. As such, the tenant is entitled to an order returning that security deposit to her. The tenant has elected to limit her claim for her half of the security deposit, that is \$200.00. The tenant is entitled to a monetary order for return of her security deposit in the amount of \$200.00.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

The tenant provided her forwarding address 6 December 2015. The tenancy ended 31 December 2014. The landlord applied for dispute resolution 24 March 2015. In this case, the landlord did not return the security deposit or apply for dispute resolution within 15 days of the date of the end of the tenancy. The landlord was not entitled to retain any amount from the security deposit. As the landlord failed to comply with subsection 38(1) of the Act, the tenant is entitled to a monetary order equivalent to the value of the security deposit pursuant to subsection 38(6) of the Act. As the tenant has elected to limit her claim for compensation

pursuant to 38(6) to \$200.00, I order that the tenant is entitled to compensation in the amount of \$200.00.

Conclusion

The landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$400.00 under the following terms:

Item	Amount
Return of security deposit	\$200.00
Subsection 38(6) compensation	200.00
=Total Monetary Order	\$400.00

The tenant is provided with a monetary order 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 this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: May 15, 2015

Residential Tenancy Branch

