



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 her pet damage and security deposits (the deposits) pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The tenant claims for \$2,984.29:

Item	Amount
Return of Security Deposit	\$897.50
Return of Pet Damage Deposit	897.50
Cost of Alternative Accommodation	276.95
Cost of Registered Mail End of Tenancy	17.52
Cost of Furnishings	644.82
Refund of Cleaning Fee	150.00
Recovery of Filing Fee (Prior Application)	50.00
Recovery of Filing Fee (Current Application)	50.00
Total Monetary Order Sought	\$2,984.29

The landlord did not attend this hearing, although I waited until 1400 in order to enable the landlord to connect with this teleconference hearing scheduled for 1330. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that she served the landlord with the dispute resolution package on 8 December 2014 by registered mail. The tenant provided me with a Canada Post tracking number that showed the same. The tenant testified that the landlord signed for this package on 19 December 2014. The tenant informed me at the hearing that she had a copy of this signature. At the hearing and pursuant to rule 3.19 of the *Residential Tenancy Rules of Procedure*, I made an order that the tenant could send me a copy of this signature after the hearing. The tenant did. On the basis of this evidence, I am satisfied that the landlord was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

At the hearing I asked the tenant if she was waiving her right, if any, to compensation pursuant to subsection 38(6) of the Act. The tenant informed me that she was not waiving any of her rights.

Preliminary Issue – Prior Application

This is the tenant's second application. The tenant's first application was dismissed with leave to reapply as the landlord did not appear and the tenant could not establish service.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement? Is the tenant entitled to a monetary award for the return of her deposits? Is the tenant entitled to a monetary award equivalent to the amount of her deposits 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

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

This tenancy began 6 October 2013. The parties entered into a written tenancy agreement on 27 September 2013. Monthly rent of \$1,795.00 was due on the first. At the beginning of the tenancy, the tenant remitted pet damage and security deposits totaling \$1,795.00 to the landlord. The tenancy agreement provides for a charge of a

\$150.00 “move out cleaning fee”. The tenancy ended 28 February 2014 by mutual agreement.

The tenant testified that, when she arrived at the rental unit on 6 October 2013, she found the landlord packing some of his remaining belongings. The tenant testified that she could see dust and dirt on the floor and in the kitchen sink. The tenant testified that she did not enter the rental unit beyond the kitchen area. The tenant testified that she determined that the rental unit was not ready for rental and left to find alternate accommodations. The tenant testified that she spent two nights at a nearby hotel. The tenant provided a receipt for the cost of her stay.

The tenant testified that the rental unit was provided furnished. The tenant testified that because of deficiencies in the rental unit she had to purchase items for the rental unit. The tenant testified that she did not make any written demand of the landlord to provide these items during the course of the tenancy.

On 14 January 2014 the tenant wrote to the landlord:

[forwarding address]

January 14, 2014

[landlord]

Re: Termination of Tenancy At [rental unit address]

In light of our mutual dissatisfaction with my tenancy of [rental unit] I would like to terminate my tenancy by February 28, 2014. I can vacate sooner if a tenant is found who requires an earlier move-in date.

I have enclosed a completed Mutual Agreement to End a Tenancy form which requires your signature. Please return a signed copy to me by email or to the mailing address provided above.

Sincerely,

[tenant]

This letter was sent to the landlord by registered mail. The tenant provided me with a receipt for this mailing.

The tenant testified that she had a professional cleaner attend at the rental unit. The tenant testified that she felt like she had to incur this cost as there was a new tenant moving in on 1 March 2014. The tenant testified that she was not asked to provide this cleaning.

The tenant testified that she arranged with the landlord to complete the condition move out inspection on 28 February 2014. The tenant testified that the landlord was late and

that the tenant had to leave to catch a ferry. The tenant testified that on 28 February 2014 she completed the condition move out inspection in the landlord's absence. The tenant testified that her forwarding address was provided for a second time on this form. The tenant testified that the completed condition move out inspection report was left in the rental unit.

The tenant testified that she did not authorize the landlord to retain any amount from her deposits. The tenant testified that she has not received return of any portion of her deposits.

I was provided with an email dated 28 March 2014. In that email the landlord refuses to return the tenant's deposits.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit and/or pet damage deposit or file for dispute resolution for authorization to retain the deposits within fifteen 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. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

I find that the tenant provided her forwarding address in writing to the landlord on 14 January 2014. The "triggering date" for the purpose of the fifteen day time limit in this tenancy is therefore the end of the tenancy, that is, 28 February 2014.

The tenant provided uncontested, sworn testimony that the landlord has not returned the deposits or filed to retain them. The tenant provided sworn and uncontested testimony that she did not authorize the landlord to retain any amount from the security deposit. As there is no lawful right of the landlord to retain the deposits, the tenant is entitled to a monetary order for the return of the deposits in the amount of \$1,795.00.

Residential Tenancy Policy Guideline, “17. Security Deposit and Set off” sets out that: 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.

At the hearing I asked the tenant if she was waiving her right to doubling of the deposits. The tenant informed me that she was not. As the landlord has not filed a claim within fifteen days of receiving the end of the tenancy and as the landlord has not returned the tenants’ security deposit, I find that the tenant is entitled to a monetary order equivalent to the amount of her deposits in the amount of \$1,795.00 pursuant to subsection 38(6).

The tenant has applied for the cost of her two-night hotel stay. The tenant admitted that she did not inspect the rental unit beyond the kitchen on 6 October 2014. While the rental unit may have not met her standards with respect to tidiness, I find that the tenant has failed to show that she could not reside in the rental unit while the rental unit was remediated. As such, the tenant is not entitled to recover the cost of her hotel stay.

The tenant applied for the cost of mailing the mutual end to tenancy documents and forwarding address by registered mail. Service of a document such as a mutual end to tenancy is not prescribed by any provision of the Act. Service of a document such as the tenant’s forwarding address can be provided by regular mail. While it may be best practice to send a document by registered mail, these documents were not required to be delivered by registered mail. Further, the landlord’s breach of the Act, regulations or tenancy agreement is not the proximate cause of the tenant’s loss. The tenant is not entitled to recover the cost of this registered mailing.

The tenant applied for the cost of various furnishings that she alleges that she had to provide. There is no basis under the Act for the tenant to recover the cost of unauthorized improvements to the rental unit. As the improvements were not agreed to, the tenant is not entitled to recover the cost of furnishings.

The tenant applies for the return of the “move out cleaning fee”. *Residential Tenancy Policy Guideline*, “29. Security Deposits” establishes items that may be considered to be part of a security deposit.

The *Residential Tenancy Act* permits a landlord to collect a security deposit. Under that Act the issue often arises as to what a landlord may collect as a deposit or payment, other than the rent, at the commencement of a residential tenancy. The Act contains a definition of “security deposit”, which also contains exclusions. As a result of the definition of a security deposit in the *Residential Tenancy Act* and the regulations, the following payments by a tenant, or monies received by a landlord, irrespective of any agreement between a landlord or a tenant would be, or form part of, a security deposit: ...

- Carpet cleaning deposit or other monies paid to secure possible future expenses;

...

[footnotes omitted; emphasis added]

As the move out cleaning fee was to secure a possible future expense, it forms part of the security deposit. For the same reasons that I ordered return of the deposits above, the tenant is entitled to return of this amount and compensation of this amount pursuant to subsection 38(6).

The tenant applied for recovery of the filing fee for her prior arbitration. The tenant submits that by failing to appear the landlord caused her application to be dismissed. The prior application was dismissed because of the tenant’s failure to provide proof of service. It is the tenant’s onus to prove that she has served the respondent. As it was the tenant’s failure that resulted in the dismissal of her first application, she is not entitled to recover the filing fee.

As the tenant has been successful in her application she is entitled to recover the cost of her filing fee for this application from the landlord.

Conclusion

I issue a monetary order in the tenant’s favour in the amount of \$3,940.00 under the following terms:

Item	Amount
Return of Security Deposit	\$897.50
Return of Pet Damage Deposit	897.50
Subsection 38(6) Compensation (Security Deposit)	897.50

Subsection 38(6) Compensation (Pet Damage Deposit)	897.50
Refund of Cleaning Fee	150.00
Subsection 38(6) Compensation (Cleaning Fee)	150.00
Recovery of Filing Fee (Current Application)	50.00
Total Monetary Order	\$3,940.00

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: July 13, 2015

Residential Tenancy Branch

