



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, RPP, 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;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65; 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 1143 in order to enable the landlord to connect with this teleconference hearing scheduled for 1100. 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.

Preliminary Issue – Service of Documents

The tenant testified that he served the landlord with the dispute resolution package on 8 May 2015 by registered mail. The tenant provided me with a Canada Post customer receipt that showed the same. The tenant testified that the mailing was returned to him as the landlord did not retrieve the mailing from the post office. The tenant testified that he sent the mailing to the landlord's residence and, to the best of his knowledge, this is the landlord's current residence.

Residential Tenancy Policy Guideline, “12. Service Provisions” sets out that service cannot be avoided by failing to retrieve the mailing:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

In accordance with sections 89(1) and 90 of the Act, the landlord was deemed served with the dispute resolution package on 13 May 2015, the fifth day after its mailing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion of his security deposit? Is the tenant entitled to a monetary award equivalent to the amount of his pet damage and security 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 an order for return of his personal possessions from the landlord pursuant to section 65 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 in March 2014. There is a written tenancy agreement, with which I was not provided. Monthly rent of \$1,500.00 was payable on the first. At the beginning of the tenancy, the landlord collected a security deposit in the amount of \$750.00 and a pet damage deposit in the amount of \$750.00. The landlord continues to hold these amounts.

The tenancy ended at some point in February 2015 when the tenant vacated the rental unit. The tenant testified that at some point he became unable to pay his rent. The tenant gave notice at some point in early February. The tenant testified that he vacated the next day. The tenant testified that when he gave his notice he indicated to the landlord that she could keep the security deposit and pet damage deposit as payment for rent. There was no written agreement in respect of this arrangement. The tenant testified that he did not pay any amount for February's rent.

The tenant testified that his landlord said she would put the tenant's belongings in the garage and the tenant could use the garage door opener to retrieve the items. The tenant indicated to the landlord that he would come and retrieve these items. The tenant testified that he missed the first scheduled pick up because his daughter-in-law had pregnancy complications. When the tenant came later he could not gain entry.

The tenant testified that he knocked on the door of the landlord's unit to see if the landlord could let the tenant in to retrieve his belongings. The landlord did not answer the door. The tenant found some of his clothing in the alley. The clothing was badly damaged from exposure to the elements. The tenant provided me with photographs of some of the damaged and missing items.

When the tenant visited the rental unit to retrieve his belongings, he met a new tenant that had started occupying the rental unit.

On 16 March 2015, the tenant wrote to the landlord. In that letter the tenant asks for return of part of his deposit as the landlord had managed to find a new tenant by 12 February 2015. The tenant does not specify what amount he is seeking to be returned. The tenant provided his forwarding address in this letter. The tenant provided a list of items that he had left in the garage to the landlord:

- sofa;
- mattress;
- dresser
- headboard;
- side table;
- clothing;
- drafting table
- guitar stands;
- headphones;
- paint set;
- speakers;
- dishes;
- glasses;
- knives;
- water colour painting;
- Emily Carr print;
- drawing and painting materials;
- kitchen towels;
- ironing board
- mop;
- broom;
- daughter's and son's artwork from school;
- various framed paintings;
- photo enlarger;
- camera equipment;
- three pairs of sunglasses;
- printer;
- Royal Dalton; and
- crystal ornaments.

The tenant testified that he has not received return of any amount of the pet damage or security deposits. The tenant testified that there are no prior orders of this Branch.

Analysis

Section 21 of the Act provides that unless the landlord gives written consent, a tenant must not apply a security deposit or a pet damage deposit as rent. There was no written agreement between the landlord and tenant to apply the security and pet damage deposits as rent. Subsection 5(1) of the Act prohibits contracting out of the provisions of the Act and Regulations. Accordingly, there was no ability by the landlord and tenant to make an oral agreement regarding the security and pet damage deposits as they purported to do.

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. However, pursuant to paragraph 38(4)(a) of the Act, 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.

These are the statutory provisions that I am obliged to apply.

The tenant testified that he provided his forwarding address in writing on 16 March 2015. The tenant testified that he has not received return of any amount of his pet damage or security deposits. The landlord has not filed to retain any amount from the deposits. The tenant did not provide written consent for the landlord to retain any amount from the security or pet damage deposits. As such, the tenant is entitled to both the return of his deposits and a monetary award equal to the value of the deposits.

I find, on the basis of the tenant's sworn and uncontested testimony as well as the demand letter, that the tenant left all the listed belongings at the rental unit. Subsections 26(3) and (4) of the Act sets out that a landlord must not seize any personal property of a tenant or prevent or interfere with a tenant's access to a tenant's personal property unless the landlord has a court order authorizing the action or the rental unit is abandoned.

As the tenant expressly said that he was coming back for his belongings, I find that the belongings were not abandoned. Accordingly, the landlord is not entitled to retain any of the tenant's belongings.

Furthermore, even if the belongings were abandoned, the landlord has obligations regarding notice, storage and disposal of abandoned personal property pursuant to sections 24 to 26 of the *Residential Tenancy Regulations*.

The tenant has testified that the landlord has possession of his belongings as set out above. Pursuant to paragraph 65(1)(e) of the Act, I order that the landlord return any of the tenant's belongings in the landlord's possession forthwith.

As the tenant has been successful in his application he is entitled to recover his filing fee from the landlord.

Conclusion

The landlord is ordered to return all of the tenant's property in the landlord's possession to the tenant forthwith.

I issue a monetary order in the tenants' favour in the amount of \$3,050.00 under the following terms:

Item	Amount
Return of Security and Pet Damage Deposits	\$1,500.00
Subsection 38(6) Compensation	1,500.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$3,050.00

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 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 subsection 9.1(1) of the Act.

Dated: July 7, 2015

Residential Tenancy Branch

