



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit, compensation for loss under the *Act* and for the recovery of the filing fee.

Service of the hearing document, by the tenant to the landlord, was done in accordance with section 88 of the *Residential Tenancy Act*, sent via registered mail on December 20, 2014. The tenant filed a receipt with a tracking number. Despite having been served the notice of hearing, the landlord did not attend the hearing.

The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issue(s) to be Decided

Is the tenant entitled to the return of double the security deposit, compensation for loss under the *Act* and the filing fee?

Background and Evidence

The tenancy began on September 01, 2013. The monthly rent was \$1,250.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$600.00. The tenant rented the basement of the landlord's home. The landlord lived upstairs

The tenant testified that on May 22, 2014, she returned to the rental unit to find a sewage spill inside the washroom. Water continued to fill the toilet and spill over. The dirty water flowed out of the washroom into the other rooms of the suite.

The tenant informed the landlord of the problem and he turned off the water supply. On May 23, 2014, the landlord gave the tenant a letter asking her to move out due to the nature of the problem. The landlord made it very clear that the suite was contaminated and unsafe for occupation and that the tenant had to move out immediately to allow the landlord to start the cleanup work.

The tenant stated that she moved to her in-law's home on May 28, 2015 and stayed there for a few days. The tenant stated that she moved into a short term rental unit and paid \$50.00 per night. The tenant also stated that during the month of August, she spent time with her family and finally moved into a new rental unit on September 01, 2014.

The dates that the tenant stayed at the short term rental are not clear. The tenant is claiming \$2,500.00 for the cost of her stay at the short term rental place. The tenant has filed a bill in the amount of \$5,250.00 for 100 nights. The check in date is May 24, 2014 and the checkout date is August 31, 2014. The tenant has not filed proof of payment for her stay at the short term rental place. The dates of stay as noted on the invoice are inconsistent with the dates of stay as testified by the tenant

The tenant stated that she met the landlord on May 31, 2014 and gave him her forwarding address in writing. The tenant stated that she did not hear back and did not receive the security deposit. A copy of the written note to the landlord was filed into evidence.

The note is dated May 31, 2014 and requests the landlord to mail a cheque for the return of the security deposit in the amount of \$600.00 within the 15 day time allowance to a forwarding address as written in the note.

The tenant stated that her ex-husband helped her move her belongings and she paid him \$200.00 for his time. The tenant is also claiming the cost of storage and a truck to transport her belongings.

The tenant stated that she lost furniture, towels, shoes and a book shelf due to contamination by the sewage water and is claiming \$800.00 as compensation. The tenant has not provided photographs or any evidence to show how she arrived at the amount that she is claiming.

The tenant testified that the landlord constantly asked her to pay for utilities when the cost of utilities was included in the rent. The tenant stated that during the tenancy, the landlord turned off power and internet a few times. The tenant testified that she worked from home sometimes and without the internet, she was unable to work which resulted in a loss of income.

The tenant is making the following claim:

1.	Return of Security deposit	\$1,200.00
2.	Short term rental	\$2,500.00
3.	Moving costs	\$200.00
4.	Storage	\$400.00
5.	Moving truck rental	\$140.00
6.	Furniture, towels, shoes, bookshelf	\$800.00
7.	Loss of internet, cable etc.	\$150.00
8.	Filing fee	\$50.00
	Total	\$5,440.00

Analysis

1. Return of Security Deposit - \$1,200.00

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Based on the sworn testimony of the tenant and in the absence of any contradictory evidence, I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of \$600.00 and is obligated under section 38 to return double this amount (\$1,200.00) plus interest on the base deposit (\$0.00). Accordingly I award the tenant her claim of \$1,200.00.

2. Short Term Rental - \$2,500.00

The invoice the tenant provided states that she checked in on May 24, 2014. The tenant testified that she moved out of the dispute rental on May 28, 2014. The tenant also stated that she spent time at her in-law's home and her family home prior to moving into her new rental unit on September 01, 2014. The time spent away from the short term rental is not noted in the invoice.

The invoice billed the tenant for 100 nights at the rate of \$50.00 per night for a total of \$5,250.00. The tenant is claiming \$2,500.00 but did not provide any proof of payment made to this short term rental unit. Since the invoice and amount claimed do not accurately depict the time spent in the rental unit and because the tenant testified that she spent time with family, I find that the tenant has not established that she incurred out of pocket expenses for her accommodation.

3. Moving - \$200.00

The tenant stated that her ex-husband helped her move and she paid him \$200.00 for his time and filed a copy of a receipt. Since the tenant was required to move unexpectedly, I find that she is entitled to the cost of moving.

4. Storage - \$400.00

The tenant has claimed "approximately" \$ 400.00 for the cost of storage of her items. The tenant filed a copy of a storage lease agreement and the cost of storing her items for one month is \$135.00. I find that the tenant is entitled to storage for one month.

5. Moving truck rental - \$140.00

The tenant has claimed "approximately" \$140.00 for the cost of renting a moving truck. The invoice filed into evidence indicates that the tenant paid a total of \$99.98 which includes the cost of storage boxes. I find that the tenant is entitled to this amount.

6. Furniture, towels, shoes, bookshelf - \$800.00

The tenant stated that some of her personal items were ruined by the contaminated water. The tenant did not provide photographs or a breakdown of the cost of the individual items that she is claiming for. In the absence of adequate evidence to support her monetary claim I am unable to determine what the tenant is entitled to for her loss.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award.

These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Accordingly I award the tenant \$200.00 towards the loss of her personal items.

7. Loss of internet, cable etc. - \$150.00.

The tenant stated that through her tenancy, the landlord and she had arguments about the cost of utilities and the landlord cut off power to the unit on a few occasions. Based on the tenant's testimony, I find that the problems occurred sometime during the tenancy and the tenant had the opportunity to file an application for dispute resolution to resolve the issue but chose not to. Now that the tenancy has ended and the tenant has not provided sufficient information on her claim, I dismiss the tenant's claim of \$150.00 for a loss of utilities that took place sometime during the tenancy.

8. Filing fee - \$50.00

The tenant has proven most of her claim and accordingly I award her the recovery of the filing fee.

Overall the tenant has established the following claim:

1.	Return of Security deposit	\$1,200.00
2.	Short term rental	\$0.00
3.	Moving costs	\$200.00
4.	Storage	\$135.00
5.	Moving truck rental	\$98.98
6.	Furniture, towels, shoes, bookshelf	\$200.00
7.	Loss of internet, cable etc.	\$0.00
8.	Filing fee	\$50.00
	Total	\$1,883.98

I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for **\$1,883.98**. This order may be filed in the Small Claims Court and enforced as an order of that Court

Conclusion

I grant the tenant a monetary order for **\$1,883.98**.

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: July 24, 2015

Residential Tenancy Branch

