



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, 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 security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1407 in order to enable the landlord to connect with this teleconference hearing scheduled for 1330. The tenant's agent 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 attended at the beginning of the conference call and confirmed that her agent had full authority to act on the tenant's behalf.

The agent testified that a mutual acquaintance told the agent that the landlord did not intend to appear at the hearing.

The agent testified that she served the landlord with the dispute resolution package on 29 March 2015 by registered mail. The tenant provided me with a Canada Post customer tracking information that showed the same. 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.

The agent testified that she served additional evidence to the landlord by regular mail on 10 August 2015. On the basis of this evidence, I am satisfied that the landlord was

deemed served with the evidence pursuant to sections 88 and 90 of the Act on 15 August 2015.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of her security deposit? Is the tenant entitled to a monetary award equivalent to the amount of her 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 a monetary award for compensation for damage or loss under the Act, regulation or tenancy agreement? 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 agent, 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 1 June 2013. Monthly rent was \$700.00. The landlord continues to hold the tenant's security deposit in the amount of \$350.00, which was collected at the beginning of the tenancy. There is no written tenancy agreement. There was no condition move out inspection report created in respect of this tenancy.

On 1 January 2014, a toilet from a unit above the rental unit flooded. The water from the toilet entered the rental unit through the ceiling. In particular, water entered the rental unit through the light fixtures in the bathroom and storage area as well as the vent in the bathroom. The agent and her husband attended at the rental unit to assist the tenant with the flood. The agent's husband spoke to the landlord who assured them that he would remedy the damage and compensate the tenant for the loss of her belongings.

The agent provided me with photographs of the flooding damage.

The agent testified that the flood damage was never remediated. The agent testified that as a result, mould began to grow in the rental unit. The agent testified that mould would grow in the shower and around the walls in the bathroom above the cabinet. I was provided with photographs of the mould damage alleged.

The agent testified that the tenant has a medical condition that makes her particularly sensitive to environmental particulates. The agent testified that the tenant was hospitalized seven times over the course of the flood. The agent testified that the

tenant has not been hospitalized since moving from the house. The agent asks me to draw the inference from the tenant's hospitalizations that the condition of the rental unit caused the tenant's health conditions. The agent testified that the tenant would spend approximately ten nights per month living at the agent's home to mitigate the health impact of the mould. The agent testified that she would attend at the rental unit once per month to clean the accumulated mould and spray mould killer.

The agent testified that there was a fan in the bathroom, but that the tenant could not use the fan because it was a fire risk from the water damage.

The agent attended at the landlord's home on the following dates for the purpose of communication with the landlord in order to secure flood remediation repairs:

- 4 April 2014
- 4 August 2014

The landlord did not answer the door. The agent left notes posted to the door communicating her desire to speak with the landlord to deal with the flood damage.

The agent telephoned the landlord on the following dates for the purpose of communication with the landlord in order to secure flood remediation repairs:

The agent's telephone calls were answered by the landlord on the following dates:

- | | |
|------------------|---------------------|
| • 3 January 2015 | • 8 July 2014 |
| • 14 March 2015 | • 3 September 2014 |
| • 16 June 2014 | • 22 September 2014 |

The remaining calls by the agent were not answered by the landlord. When the landlord's voice message service was not full, the agent would leave a voicemail asking the landlord to contact her.

The agent sent 42 text messages in relation to the flood issue.

On 18 November 2014, the agent emailed the tenant's notice to end tenancy to the landlord. The tenant's notice set out that she sought to end the tenancy effective 31 December 2014. The agent testified that the email contained the tenant's forwarding address. The tenant vacated the rental unit on or about 23 December 2014. The tenancy ended 31 December 2014.

The agent testified that on 27 December 2014, the landlord was to attend at the rental unit to conduct a condition move out inspection. The agent testified that the landlord did

not attend at that time. The agent testified that on 28 December 2014, she attended at the landlord's residence. The agent testified that she tried to hand the landlord a note containing the tenant's forwarding address. The agent testified that she told the landlord what the note was and then the landlord closed the door on the agent without taking the note. The agent testified that she posted the note to the landlord's door.

The agent testified that the tenant has not received her security deposit back from the landlord. The agent testified that, to the best of her knowledge, there are no outstanding orders of this Branch with respect to this tenancy. The agent testified that, to the best of her knowledge, there is no reason(s) that would entitle the landlord to withhold any amount of the security deposit.

The tenant claims for \$3,150.00; however her detailed calculation of her claim sets out various enumerated claims totaling \$3,400.00:

Item	Amount
Return of Security Deposit	\$350.00
Subsection 38(6) Compensation	350.00
Moving Expenses	550.00
Compensation for Reduction in Value of Tenancy (25% over 12 months)	2,100.00
Filing Fee	50.00
Total	\$3,400.00

Analysis

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 both to return the security deposit to the tenant and to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

The tenancy ended 31 December 2014. The tenant provided her forwarding address to the landlord in writing on 28 December 2014 by posting it to the landlord's door. Pursuant to section 90 of the Act the forwarding address was deemed received by the landlord on 31 December 2014. Accordingly, the landlord had until 15 January 2015 to return the security deposit to the tenant or file a claim against it with the Residential Tenancy Branch. On this basis the tenant has proven her entitlement to both return of her security deposit and compensation pursuant to subsection 38(6) of the Act.

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant 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 wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

On the basis of the agent's sworn and uncontested testimony, I find that:

- the rental unit flooded on or about 1 January 2015;
- as a result of the flood the rental unit did not comply with subsection 32(1) of the Act;
- the agent was diligent in attempting to secure necessary repairs from the landlord;
- the landlord did not carry out the repairs as required; and
- as a result of the landlord's failure to carry out required repairs the tenancy was devalued by 25%; and
- as a result of the landlord's failure to carry out the required repairs, the tenant was forced to end the tenancy and incur unexpected moving costs.

The tenant has not provided any receipt, invoice, or quote to substantiate the cost of her move. By failing to provide documentary evidence, the tenant has failed to show the monetary amount of this claim. Where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this, I award the tenant nominal damages for her moving cost of \$50.00.

In respect of the claim for devaluation of the tenancy, I must consider whether the tenant has sufficiently mitigated her damages. Despite months of inaction by the landlord, the tenant continued to occupy the rental unit. By failing to move from the rental unit, the tenant failed to minimize her losses. I find that it would have been reasonable on the tenant's part to have vacated the rental unit after six months of inaction by the landlord. By continuing to occupy the rental unit the tenant continued to expose herself to losses. Accordingly, I find that the tenant is only entitled to a

reduction in rent for the first six months. The tenant has proven her entitlement to \$1,050.00 in compensation for the reduced value of the tenancy.

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

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,850.00 under the following terms:

Item	Amount
Return of Security Deposit	\$350.00
Subsection 38(6) Compensation	350.00
Moving Expenses	50.00
Compensation for Reduction in Value of Tenancy (25% over 6 months)	1,050.00
Filing Fee	50.00
Total Monetary Order	\$1,850.00

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: September 11, 2015

Residential Tenancy Branch