



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss and the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing by conference call and gave undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package by Canada Post Registered Mail on August 6, 2015. The tenant clarified that the notice of hearing package and the submitted documentary evidence was returned by Canada Post as "RTS", meaning Return to Sender. The tenant stated that the package was unclaimed by the landlord. The landlord clarified that the address provided was from the signed tenancy agreement which was supplied by the landlord. The tenant clarified that the rental unit was the "BASEMENT" and that the landlord occupied the "UPPER" portion of the house. Based upon the above undisputed affirmed evidence, I find that the landlord has been properly served as per section 88 and is deemed served as per section 89 of the Act.

At the beginning of the hearing the tenant's application was amended to include the "UPPER" and the "BASEMENT", designations for the landlord's mailing address and the address for dispute.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss, the return of double the security deposit and recovery of the filing fee?

Background and Evidence

This tenancy began on March 1, 2012 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated February 11, 2012. The monthly rent was \$900.00 payable on the 1st day of each month and a security deposit of \$450.00 was paid on February 15, 2012.

The tenant provided undisputed affirmed evidence that the tenancy ended on May 30, 2015 and the landlord was provided with her forwarding address in writing in a letter dated June 21, 2015 by Canada Post Registered Mail on June 22, 2015. The tenant has submitted a copy of the Canada Post Customer Receipt Tracking Receipt as confirmation. The tenant has also submitted a copy of the signed tenancy agreement, a copy of a handwritten receipt for payment of the \$450.00 security deposit dated February 11, 2012 signed by the landlord.

The tenant seeks a monetary claim of \$1,950.00 which consists of:

\$900.00	Return of Double the Security Deposit
\$1,000.00	Compensation for Harassment
\$50.00	Recovery of the Filing Fee

The tenant also confirmed in her direct testimony that as of the date of this hearing the landlord has not returned the \$450.00 security deposit; the landlord does not have permission to retain the security deposit from the tenant nor is aware of the landlord making an application for dispute resolution to retain the security deposit.

The tenant gave written details which state,

He has also doing harassment t us through his aggressive and rude words in text messages exaggerating his complaints about us during the last few months of our stay there. For this harassment, I am charging him another \$1,000.00.

The tenant has also provided a written spreadsheet which outlines 4 occasions on April 4, 2015, April 8, 2015, April 10, 2015 and April 13, 2015 in which the landlord has sent text messages to the tenant. (Text messages are all in Capitalized letters)

What is being put in my dryer that is making so much noise?

Whoever is playing the loud music can turn it down... This is a house not a night club. Turn the music down!!!!

Effective immediately access to the laundry room will be on Sundays from 9am to 5pm.

I have never in my life seen such ignorant & irresponsible tenants such as yourselves... There are four of you & yet not even a single one of you can be bothered to put out or even bring back the garbage or recycling dumpsters butch yet you are all quick to fill them up!!!!... There is a deep scratch on my washing machine... I am still waiting for an explanation as to how the hell a stell bolt was left in the filter in my dryer????!!!! My laundry room is being left in an absolutely filthy condition everytime that you use it... I should not be expected I pick up your hairs that are all over the floor and both the washing machine and the dryer... The rear basement entry looks like a total trailer park trash site... I do not know what you people are trying to prove to me but take note.. This is my house not some pig sty.

The tenant stated that the \$1,000.00 claim for compensation was an “estimate” of damages. The tenant clarified that this was what she felt was proper compensation for being harassment for the 1 week period.

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 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.

I accept the undisputed affirmed testimony of the tenant and find that a claim for the return of the \$450.00 security deposit has been established by the tenant. The landlord failed to return the security deposit, nor does the landlord have permission from the tenant to retain it. There is no evidence before me that the landlord obtained an order authorizing this. On this basis, I also find that section 38 (6) of the Act applies and that the landlord is liable for an amount (\$450.00) for failing to comply with the Act. The

landlord has failed to return the original \$450.00 within 15 days after the end of the tenancy or when he receives the tenant's forwarding address in writing. The tenant has provided undisputed evidence that the landlord was served with a letter dated June 21, 2015 which provides a demand for the return of the security deposit and the tenant's forwarding address in writing. This is confirmed by the tenant's submitted copy of the Canada Post Registered Mail Tracking Receipt.

Residential Tenancy Branch Policy Guideline #6, Right to Quiet Enjoyment references harassment and states,

Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome".³ As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. There are a number of other definitions, however all reflect the element of ongoing or repeated activity by the harasser.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

I find based upon the tenant's undisputed evidence that she did suffer a temporary discomfort or inconvenience, but that this did not breach the covenant of quiet enjoyment. The tenant relied upon copies of 4 text messages that she received from the landlord over 4 different days. The tenant's written submission stated,

When I read this message I felt he was screaming at me, being big letter and with all the question marks.

This portion of the tenant's claim for compensation is dismissed.

As the tenant was partially successful in this application, I find that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the tenant's favour under the following terms which allows the tenant to recover her original security deposit plus a monetary award equivalent to

the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act:

Item	Amount
Return of Security Deposit	\$450.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the Act	450.00
Recover Filing Fee	50.00
Total Monetary Order	\$950.00

The tenant is provided with this orders in the above terms and the landlord(s) must be served with a copy of 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 21, 2016

Residential Tenancy Branch

