



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROTHER'S CONSTRUCTION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement.

The tenant and two agents for the landlord (the “agents”) attended the teleconference hearing. The parties were affirmed and the opportunity to ask questions was provided to both parties. The agents confirmed receiving the tenant’s documentary evidence and that the agents had the opportunity to review that evidence prior to the hearing. The agents confirmed that the landlord did not submit any documentary evidence in response to the tenant’s application. The evidence of the parties is summarized below and includes only that which is relevant to the matters before me.

I find the landlord to have been sufficiently served in accordance with the *Act* and accept the agents’ testimony that the landlord did not serve documentary evidence in response to the tenant’s application for dispute resolution.

Preliminary and Procedural Matters

During the hearing, the tenant confirmed that she had vacated the rental unit on March 21, 2016 and provided her new mailing address which was updated on her Application by consent of the parties. In addition, as the tenant has vacated the rental unit, I find it is not necessary to consider the tenant’s request for the landlord to comply with the *Act*, regulation or tenancy agreement as the tenancy ended on March 21, 2016 when the tenant vacated the rental unit.

Issue to be Decided

- Is the tenant entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The parties agreed that a tenancy began on May 21, 2001. Monthly rent was originally \$620.00 per month and due on the first day of each month. During the term of the tenancy, the monthly rent increased to the final amount of \$677.00 per month. The parties confirmed that the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") dated February 26, 2016. The 2 Month Notice had an effective date of April 30, 2016. The parties submitted a copy of a Mutual Agreement to End a Tenancy which was signed by the parties and indicated the end of tenancy date as March 21, 2016.

The tenant's monetary claim of \$1,900.00 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Compensation for one month's rent due to receipt of 2 Month Notice	\$700.00
2. Moving expenses	\$349.25
3. Anticipated second move	\$150.00
4. Loss of quiet enjoyment	\$700.75
TOTAL	\$1,900.00

For ease of reference, I will refer to the each item by the description of each item described above.

Item 1

Although the tenant's claim for this item is \$700.00 I note that monthly rent is \$677.00 and not \$700.00 as claimed. The tenant confirmed that when she was served with the 2 Month Notice she did not dispute it and instead moved out early by signing a mutual agreement to end a tenancy effective March 21, 2016. The tenant also confirmed that she did not provide written notice to the landlord after being served with the 2 Month Notice before signing the mutual agreement to end a tenancy in which the parties agreed to end the tenancy on March 21, 2016.

The tenant confirmed that the landlord was very generous in giving her \$370.00 for her security deposit when the original security deposit was \$310.00 which make the interest payable only \$16.92, for a total security deposit to be returned of \$326.92.

The parties did not dispute that a 2 Month Notice was served on the tenant. The parties confirmed that while several proposed agreements regarding compensation to the tenant were discussed, including the equivalent of one month of compensation that is due by the landlord under the *Act* when a landlord serves a tenant with a 2 Month Notice, the parties could not reach a settlement agreement prior to or during the hearing.

Items 2 and 3

The tenant has claimed \$349.25 for moving expenses for item 2 and \$150.00 for an anticipated second move for item 3 as she is living in a temporary accommodation which was dismissed during the hearing as the tenant signed a mutual agreement to end the tenancy after being served with a 2 Month Notice and did not dispute the 2 Month Notice. As a result, I find the tenant is not entitled to moving expenses as the tenancy would have ended based on an undisputed 2 Month Notice pursuant to section 49 of the *Act*, however, ended earlier than the effective date listed on the 2 Month Notice based on the mutual agreement to end a tenancy which was agreed to in writing between the parties.

Item 4

This item refers to the tenant's claim for loss of quiet enjoyment for a period of 12 days between March 8, 2016 to March 19, 2016. During the hearing, although the parties were unable to reach a mutually settled agreement, the agents testified that the landlord acknowledged that they were willing to offer the tenant compensation for 100% of the loss of use of the rental unit for the period of 12 days as the balconies had been removed by the landlord. The agents stated that while the tenant still could enjoy other areas of the rental unit, they were willing to acknowledge a loss for the tenant due to the balcony work being done and would compensate the tenant for 12 days at the daily rental rate.

As monthly rent is \$677.00 per month, divided by 31 days in March 2016, I find the daily rent rate to be \$21.84 per day. As a result, the landlord is willing to offer the tenant \$262.08 for the full 12 days for the period of March 8, 2016 to March 19, 2016.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

Item 1 – As indicated above, although the tenant has applied for \$700.00 for item 1, I find that the agreed amount of monthly rent was actually \$677.00. The parties did not dispute that a 2 Month Notice was served on the tenant. As the parties agreed that the one month of compensation has not yet been provided due to failed negotiations between the parties, I find that pursuant to section 51(1) of the *Act*, the tenant is owed \$677.00 which is the equivalent of one month's rent for having been served with a 2 Month Notice. Therefore, I find the tenant has met the burden of proof and entitled to \$677.00 for this portion of the tenant's claim.

However, the tenant confirmed that the landlord overpaid her security deposit by giving her \$370.00 for her security deposit when the original security deposit was \$310.00 which make the interest payable only \$16.92, for a total security deposit to be returned of \$326.92. Therefore, pursuant to section 62 of the *Act*, I find that the tenant was overpaid for the security deposit and will deduct the overpayment from this portion of

the tenant's monetary claim. The amount of \$370.00 paid to the tenant less the \$326.92 amount which is the original \$310.00 security plus interest of \$16.92, results in an overpayment by the landlord to the tenant in the amount of \$43.08. Therefore, I deduct \$43.08 from the \$677.00 due to the tenant, and find the balance owing by the landlord to the tenant for item 1 to be **\$633.92.**

Items 2 and 3

Items 2 and 3 were dismissed during the hearing. The tenant has claimed for moving expenses and anticipated second move as she is living in a temporary accommodation which I find the tenant is not entitled to as the tenancy would have ended based on an undisputed 2 Month Notice pursuant to section 49 of the *Act*; however, ended earlier than the effective date listed on the 2 Month Notice based on the mutual agreement to end a tenancy which was agreed to in writing between the parties. Given the above, I find the tenancy ended by way of a mutual agreement to end the tenancy effective March 21, 2016 and the tenant has failed to prove all four parts of the test described above.

Item 4

This item refers to the tenant's claim for loss of quiet enjoyment for a period of 12 days between March 8, 2016 and March 19, 2016. During the hearing, although the parties were unable to reach a mutually settled agreement, the agents testified that the landlord acknowledged that they were willing to offer the tenant compensation for 100% of the loss of use of the rental unit for the period of 12 days as the balconies had been removed by the landlord. The agents stated that while the tenant still could enjoy other areas of the rental unit, they were willing to acknowledge a loss for the tenant due to the balcony work being done and would compensate the tenant for 12 days at the daily rental rate.

I find that section 28 of the *Act* applies which states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

[my emphasis added]

Based on the above, I find the landlord breached section 28 by removing the balconies of the rental unit, which were part of the monthly rent paid by the tenant. Based on the testimony of the parties, however; I find that the tenant is not entitled to more than what the landlord has already offered to the tenant which is 100% of the per diem rental amount between March 8, 2016 and March 19, 2016. I dismiss any other time period for loss of quiet enjoyment during the tenancy due to insufficient evidence presented by the tenant.

Given the above, I find the tenant has met the burden of proof for compensation between the dates of March 8, 2016 to March 19, 2016 for the loss of use of the balcony and the impact that had on her right to quiet enjoyment of the entire rental unit. **I grant** the tenant the amount of **\$262.08**. That amount was reached by taking the monthly rent of \$677.00 and dividing that by 31 days for March, which is \$21.84 per day and then multiplying that amount by 12 for a total of \$262.08.

I find that the tenant has established a total monetary claim of **\$896.00**, comprised of item 1 described above in the amount of \$633.92 which includes a deduction for the overpayment of the security deposit by the landlord, plus \$262.08 for item 4. Items 2 and 3 are dismissed. **I grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$896.00**.

Conclusion

A portion of the tenant's application is successful.

The tenant has established a total monetary claim of \$896.00 as described above. The tenant is granted a monetary order pursuant to section 67 of the *Act* in the amount of \$896.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 3, 2016

Residential Tenancy Branch