



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This is an application by the tenant filed under the Residential Tenancy Act (the “*Act*”) for a monetary order for return of double the security deposit (the “Deposit”), for money owed or for compensation under the *Act* and the filing fee for the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on November 22, 2016, a Canada post tracking number was provided as evidence of service.

The tenant stated that the package was returned unclaimed by the landlord.

Section 90 of the *Act* determines that a document served in this manner is deemed to have been served five days later. Refusal or neglect to pick up the package does not override the deemed service provision of the *Act*, I find that the landlord has been duly served in accordance with the *Act*.

The tenant stated that they also served the landlord a copy of the amended application by registered mail sent on December 20, 2016. The tenant stated they are unable to locate the Canada post tracking receipt. I am satisfied based on the evidence that the landlord was duly served with the amended application.

The tenant appeared, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to a monetary order for return of double the Deposit?

Is the tenant entitled to compensation for money owed or loss the *Act*?

Background and Evidence

The tenancy began on October 1, 2016. Rent in the amount of \$800.00 was payable on the first of each month. A security deposit of \$400.00 was paid by the tenant. The tenancy ended on November 24, 2016.

The tenant claims as follows:

a.	Double the security deposit	\$ 800.00
b.	Loss of service and quiet enjoyment	\$ 500.00
c.	Filing fee	\$ 100.00
	Total claimed	\$1,400.00

The tenant testified that they vacated the premises on November 24, 2016. The tenant stated that they provided the landlord with a written notice of the forwarding address on November 30, 2016, by posting a letter containing the information on the door of the landlord's residence, which was witnessed. The tenants stated that they did not authorize the landlord to retain any amount from the Deposit.

The tenant testified that they seek compensation for loss of services that were included in the rent. The tenant stated on November 14, 2016, the landlord removed the cablevision and internet services. The tenant stated that they informed the landlord that they need to reinstated the services or they would file for dispute resolution. The tenant stated the services were not reinstated before the tenancy ended.

The tenant testified that they seek compensation for loss of quiet enjoyment because when they informed the landlord on November 14, 2016, that they were filing for dispute resolution the landlord retaliated by playing loud music, stomping and banging. The tenant stated this was ever day until the tenancy ended on November 24, 2016.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must do one of the following:**

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this case, there was no evidence that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address, which was given on November 30, 2016.

I find the landlord has breached 38(1) of the Act. The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an Arbitrator. Here the landlord did not have any authority under the *Act* to keep any portion of the Deposit. Therefore, I find that the landlord was not entitled to retain any portion of the Deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pays the tenant the sum of **\$800.00**, comprised of double the security deposit of \$400.00.

Further, I accept the undisputed testimony of the tenant that the landlord removed services that were included in the rent on November 14, 2016. I find the landlord breached the Act when they removed services provided under the tenancy agreement and this devalued the tenancy. In this case, the tenant provided no evidence of the value of the loss of service, such as the actual cost to replace the services. Therefore, I grant the tenant a nominal amount to recognize the breach of the *Act* by the landlord in the amount of **\$1.00**.

Furthermore, I accept the undisputed testimony of the tenant that the landlord retaliated when they were informed by the tenant that they were filing for dispute resolution to reinstate the services. I find by continuously playing loud music, purposely banging and stomping that the landlord failed to provide quiet enjoyment of the rental premises to the tenant for a ten (10) day period, as this is not normal household noises. I find the landlord breached the Act. I find it appropriate that the tenant is entitled to compensation for loss of quiet enjoyment in the amount of half the daily rent of \$26.30 for the ten day period (13.15×10). Therefore, I grant the tenant compensation in the amount of **\$131.50**.

I find that the tenant has established a total monetary claim of **\$1,032.50** comprised of the above described amounts and the \$100.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's' application for return of double the Deposit and for compensation under the Act is granted. The tenant is granted a monetary order in the above noted amount.

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 04, 2017

Residential Tenancy Branch