Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MND MNDC MNSD

Introduction

This hearing was convened in response to applications by both parties pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The tenant requested:

- a Monetary Order for loss of quiet enjoyment pursuant to section 67 of the *Act;*
- an Order for double the return of his security deposit pursuant to section 38 of the *Act*; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The landlord requested:

- a Monetary Order for damage to the unit pursuant to section 67 of the *Act*;
- authorization to retain the security deposit pursuant to section 72 of the *Act;* and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord explained that she hand delivered the Landlord`s Application for Dispute Resolution (the "Landlord's Application") and her evidentiary package to the tenant`s PO Box on January 4, 2017. The PO Box address is the address that the tenant provided to the landlord for service. Pursuant to sections 88, 89 and 90 of the *Act*, the tenant is deemed to have been served with these documents on January 9, 2017.

The tenant served the landlord in person with his Tenant's Application for Dispute Resolution (the "Tenant's Application") on January 3, 2017. Pursuant to section89, the landlord is found to have been served in accordance with the *Act* on January 3, 2017.

At the outset of the hearing the tenant stated that he wished for the Landlord's Application to be dismissed as he was served with the Landlord's Application, beyond the 3 day limit noted on an email produced in the landlord's evidentiary package.

Section 59(3) and *Residential Tenancy Policy Guideline #12* state that "a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director."

Although the *Act* says that a person must be served within three days of filing an application for dispute resolution, there are no consequences in the *Act* for failing to provide a copy of one's application to the other party within 3 days. The tenant acknowledged receipt of the Landlord's Application, the tenant attended the hearing and was not prejudiced in receiving the Landlord's Application beyond the 3 day limit and the tenant had adequate time to prepare a lengthy submission and evidence. As such, I will allow the landlord's application to proceed.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for loss suffered under the *Act*?

Is the landlord entitled to keep all or part of the security deposit to apply against a Monetary Order?

Is the tenant entitled to obtain a monetary award equivalent to double the return of his damage deposit?

Is either party entitled to a return of their filing fee?

Background and Evidence

Testimony was provided by both parties that this tenancy began on April 6, 2014 and the landlord stated it ended on November 30, 2016. The tenant disputed this end date and argued that the tenancy ended on November 22, 2016.

It was agreed by both parties that rent was $1,800.00 per month and a $900.00 security deposit continues to be held by the landlord.

The landlord explained that she was seeking a Monetary Order of $1,200.00 as compensation she suffered for damage to plants on her property. Specifically, the

landlord was given a quote of $1,100.00 by two different professional landscapers. She is also looking to recover the filing fee of her application.

The tenant stated that he is seeking a Monetary Order of $3,600.00. The tenant is looking for double the return of his security deposit which is currently held by the landlord and a return of one month's rent for the loss of quiet enjoyment that he alleges he suffered in the final month of his tenancy.

As a basis for his allegations of loss of quiet enjoyment, the tenant cited 61 text messages he received from the landlord over the period of a month, two incidents that occurred with the landlord's boyfriend and what the tenant termed "illegal" and frequent showings of his apartment, without his consent.

The landlord disputed these accusations and provided evidence that both parties antagonized one another.

Analysis – Tenant's Application to Obtain a Return of Double his Security Deposit

The tenant has applied pursuant to section 38 of the *Act* for return of double his security deposit. The tenant explained that on December 17, 2016 he sent, via text message, a copy of his forwarding address to the landlord. The tenant argued that he was entitled to double the return of his damage deposit because the landlord did not make an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(d) of the *Act* within 15 days of receiving this address.

Section 38(1) reads:

> **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
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> 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.

The landlord provided testimony and written evidence was submitted as part of her evidentiary package that she applied for dispute resolution on December 21, 2016. On December 30, 2017 the landlord was informed that her application for dispute resolution was processed and she was sent an email explaining that she had until January 2, 2017 to serve the tenant.

Based on the agreed upon December 17, 2016 date, it is evident that the landlord applied for dispute resolution within 15 days of receiving the tenant`s forwarding address.

The tenant`s application for double the security deposit is therefore dismissed.

Analysis – Tenant's Application for a Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove his entitlement to his claim for a monetary award.

The tenant explained that he was seeking a Monetary Order for $1,800.00 as a result of his loss of quiet enjoyment for the month of November 2016.

Residential Tenancy Policy Guideline #6 – examines the factors to be considered when determining whether or not one's entitlement to quiet enjoyment has been breached.

> A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. ***This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.***

As evidence of his loss of quiet enjoyment, the tenant produced in his evidentiary package 61 hand-written texts and two police reports noting their attendance to the premises. He also provided testimony describing the viewings to which he purportedly

did not consent. The tenant noted that the apartment was shown without his consent and without notice on November 3rd and 8th, 2016.

The landlord acknowledged sending these text messages; however, she explained that many of these texts were friendly in nature, asking the tenant to replace a lightbulb and containing the normal exchanges one would expect of a landlord and tenant. The tenant was unable to reproduce original copies of the text messages. Instead he provided hand written versions of what he purported to be reproductions of the texts. I do not accept these messages as legitimate records of dialogue between the two parties. Even if I did accept them, it is evident by reading the hand-written reproductions that many of the texts dealt with routine issues associated with a tenancy.

The police reports provided to the hearing demonstrate that the police were called to the premises by the tenant on two occasions. These reports note that "all parties involved alleging threats. No evidence to prove offence occurred. PC K advised all parties that this was a landlord-tenancy dispute and would have to be resolved civilly via RTB."

The landlord maintained that both parties were responsible for provoking each other. Of note, the tenant shut off the heat to the main house on November 22, 2016. Furthermore, the tenant wrote a letter of apology under the guidance of the police department. This letter was produced at the hearing by the landlord. This letter acknowledged wrongdoing on his part concerning the damage done to the plants that were destroyed and provided for the landlord to have potential renters view the rental property between Mondays and Fridays from 11:00 A.M. to 1:00 P.M, and on Saturday and Sundays from 10 A.M. to 12:00 P.M.

In addition, the tenant made an unsubstantiated claim that he feared for the safety of his dog. He provided no evidence that the dog was ever threatened in any manner.

Based on the evidence and testimony presented by both parties at the hearing, I am not satisfied that the tenant has met the burden of proof required to prove entitlement to a Monetary Order for his loss of quiet enjoyment of the rental unit. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

I am dismissing the tenant's application for a Monetary Order for loss of quiet enjoyment.

Analysis – Landlord's Application for a Monetary Order

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The onus remains on the landlord to prove her entitlement to the funds claimed.

The landlord provided testimony and written evidence was submitted with the hearing package demonstrating that she suffered approximately $1,100.00 in losses as a result of the tenant's actions. During the course of the hearing, the tenant acknowledged damaging the plants, however; he maintained that he replaced the plants and therefore this claim should be dismissed.

Testimony from the landlord, along with a letter written by a woman employed by the landlord for the past five years was provided as part of the landlord`s evidentiary package. This letter noted that the plants originally present on the property were of the large and mature variety. The tenant disputed this notion describing the plants as small and not to the size described.

As evidence of her anticipated costs, the landlord provided two invoices from gardening services demonstrating the cost associated with replacing the plants in question. These showed the price to be $1,155.00. The tenant argued that he replaced the plants and should therefore not have to pay this amount. The evidence provided by the tenant demonstrates while the plants he purchased were the same variety as those that he destroyed, the plants meant as replacements were very small, young and would take an extremely long time to grow to the size of the ones that were damaged. The landlord testified during the course of the hearing that the plants in question were large. An evidentiary letter was produced as evidence describing the plants as a "spectacular display of 6 x 10' tall bushes." A quotation from WHS landscaping notes, "we are unable to replace the same height as the previous plants." I am satisfied based on the evidence the landlord has proved loss and damage occurred in that sum requested, and she has made adequate attempts to replace the plants with ones as closely matched as possible.

Using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenant's $900.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in her application, she is entitled to recovery of the $100.00 filing fee.

Based on the landlord's testimony, the letter provided in her evidentiary package describing the size of the plants formerly present on the property, and the tenant's admission that he was responsible for the current state of the plants; **I find that pursuant to section 67 of the *Act* the landlord is entitled to receive a monetary order for damages suffered to her property for $355.00.**

Conclusion

I am making a Monetary Order of $355.00 in favour of the landlord as follows:

Item	**Amount**
Replacement of damaged plants	$1,155.00
Less Security Deposit	(-$900.00)
Recovery of Filing Fee	100.00
Total Monetary Award	**$355.00**

The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

The tenant's application for a Monetary Order for loss of quiet enjoyment, for a return of double the security deposit and the filing fee is dismissed.

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: February 22, 2017

Residential Tenancy Branch