



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD, OLC

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$2,553
- b. An order for the return of the tenant's security deposit/pet damage deposit.
- c. An order that the landlord comply with the Act, regulation and/or tenancy agreement.
- d. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of the applicants and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. The Policy Guideline further provides that it is sufficiently served even where the respondent refuses to pick up their registered mail. I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail where the landlord resides and it was sufficiently served even though the landlord failed to claim the registered mail package. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on August 1, 2016 when the parties entered into a fixed term tenancy agreement that provided that the fixed term would end on March 31, 2017 and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of \$1500 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$750 at the start of the tenancy.

In early December 2016 the tenants left the country on a holiday. They were advised by e-mail from the landlord that a pipe had burst in the rental unit causing the premises. The tenants

returned in late December and determined the rental unit was not habitable. The tenants asked the landlord when the repairs would be completed. The landlord stated he did not know and it was in the hands of the insurance company. As a result the tenant determined the tenancy had been frustrated as the landlord failed to provide a date when they could re-occupy. The tenants found alternative accommodation and vacated the rental unit on January 7, 2017.

I determined the tenancy was frustrated as it was not possible when the rental unit would be habitable. I concluded the tenancy ended on January 7, 2017 after the tenants removed all of their belongings. The landlord agreed with the tenants that he would not charge them rent for January 2017. The tenants provided the landlord with their forwarding address in writing on January 3, 2017. .

Part of the tenants' claim relates to having to vacate the rental unit because of the damage caused by the burst pipe making the rental unit uninhabitable. It is unclear what caused the pipe to burst. The tenants had been away since early December and had turned down the heat. It appears there may have been a structural problem with the building. The tenant testified evidence relating to the cause of the bursting of the pipe is in the hands of the landlord's insurance company who have not released the evidence to him. The landlord did not appear at the hearing and failed to provide evidence of any sort.

The applicant has a burden of proof. In a situation such as this I determined it was not appropriate to consider these claims as it is not possible to determine what caused the flood. The granted the tenant's request to withdraw these claims on a without prejudice claims. As a result I ordered that the following claims be dismissed with leave to re-apply:

- Cost of utilities paid to the City of Penticton \$186.27
- Best Western Inn hotel room \$285.43
- Moving costs (Green Cube) \$433.13
- Reimbursement of rent for December 27 – 31 \$325.00
- Stop Payment Orders \$ 30.00
- Increase in Rent \$300.00

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenants paid a security deposit of \$750 at the start of the tenancy on August 1, 2016. I determined the tenancy ended on January 7, 2017. I further determined the tenants provided

the landlord with their forwarding address in writing on January 3, 2017. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. The tenant stated he was not waiving his right to the doubling of the security deposit. As a result I determined the tenants have established a claim against the landlord for double the security deposit or \$1500.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1500 plus the sum of \$100 in respect of the filing fee for a total of \$1600. I dismissed the claim for the cost of a courier as that relates to cost of litigation. The only jurisdiction an arbitrator has relating to costs is the cost of the filing fee.

Conclusion:

In conclusion I ordered the landlord to pay to the tenant the sum of \$1600. I dismissed the claim for courier without leave to re-apply. I ordered that the other monetary claims brought by the tenant be dismissed with liberty to re-apply.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims Court.

This decision is final and binding on the parties.

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: March 08, 2017

Residential Tenancy Branch