



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM PROPERTIES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, FF, MNSD

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* ("Act").

The corporate landlord applied for:

- a Monetary Order for damages and loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant named both the corporate landlord and personal landlord in her application and applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented herself with the assistance of her employer, DH.

As both parties were in attendance I confirmed there were no issues with service of the landlord's application for dispute resolution, the tenant's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with one another's applications and the parties were served with copies of the respective evidentiary materials.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damages and loss arising out of this tenancy?
Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?
Is either party entitled to recover the filing fee for this application from the other?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the parties' claims and my findings around each are set out below.

The parties agreed on the following facts. This periodic tenancy began in March, 2009. The rent at the end of the tenancy was \$1,800.00 payable on the first of the month. The tenant paid a security deposit of \$800.00 at the start of the tenancy. The parties participated in a condition inspection together at the start of the tenancy.

During the tenancy, in July, 2014 the surface of the glass top stove in the rental unit became cracked when the tenant used the self-cleaning function of the stove. The tenant advised the landlord who initially investigated the cost of repairs. In her email correspondence dated July 9, 2014, the landlord attributed the damage to the difference in temperature caused by the self-cleaning mode and took steps to fix or replace the stove top. The landlord subsequently advised the tenant that she should look to her own insurance policy to have repairs made. The tenant requested that the landlord make the repairs but the landlord declined. The tenant provided online reviews and comments where other users mention that it is an inherent defect in the appliance that the surface easily cracks. The stove remained partially usable for the duration of the tenancy.

The tenant gave notice to the landlord on December 16, 2016 that she would be ending the tenancy on January 31, 2017. To accommodate the parties' schedule the parties agreed to a move out inspection on January 23, 2017. The tenant testified that she has not been provided with a copy of the final condition inspection report. The tenant testified that while the damage to the surface of the glass top stove was noted in the report she did not give the landlord written permission that the landlord may keep any portion of the security deposit.

The tenant said that as she returned the keys to the rental unit to the landlord on January 23, 2017, she should be reimbursed for the portion of the January rent for the period of January 23, 2017 to January 31, 2017. Based on the monthly rent of \$1,800.00 the tenant calculates that she is entitled to a refund of \$450.00 for that period.

The landlord said that she believed that the cost of repair would be approximately \$500.00, as that was what she was quoted by the maintenance services in 2014. The landlord deducted \$500.00 from the \$800.00 security deposit and returned \$300.00 to the tenant by a cheque dated January 30, 2017. The landlord testified that the tenant had not provided written

authorization to deduct the amount from the security deposit nor has she made a specific application for authorization to make the deduction.

The landlord subsequently discovered that the parts for the stove were no longer available and the entire stove needed to be replaced. The landlord is seeking \$400.00 from the tenant, in addition to the \$500.00 she retained of the tenant's security deposit, for the cost of a replacement stove.

Analysis

Section 45(1)(b) of the *Act* provides that a tenant may end a periodic tenancy on a date that is the day before the day in the month that rent is payable under the tenancy agreement. The parties testified that the tenant gave notice that the tenancy would end on January 31, 2017. In order to accommodate both parties' schedule, a condition inspection of the rental unit was performed on January 23, 2017. The tenant testified that she surrendered the keys to the rental unit on that date. I find that pursuant to the *Act*, the tenancy ended on January 31, 2017. The parties made an agreement to return the keys on January 23, 2017 but the tenant remained entitled to the rental unit. I do not find that the early surrender of the keys to have ended the tenancy earlier than agreed upon. Consequently, I find that the tenant is not entitled to a reimbursement of a portion of the rent for the month of January, 2017 and dismiss this portion of the tenant's claim.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I find that the tenancy ended on January 31, 2017. The landlord issued a cheque in the amount of \$300.00 deducting \$500.00 from the security deposit. I accept the evidence of the parties that the tenant did not provide written authorization that the landlord may retain any portion of the security deposit. I find that the landlord's application for dispute resolution filed on February 9, 2017 seeks a relief for damages and compensation but does not make an application to keep all or a part of the security deposit.

Based on the undisputed evidence before me, I find that the landlord has not filed an application to retain the security deposit within the 15 day time limit and has failed to return the tenant's security deposit in full. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with

section 38(6) of the *Act*, I find that the tenant is entitled to a \$1,600.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the landlord has provided payment to the tenant in the amount of \$300.00 already, I issue a Monetary Order in the amount of \$1,300.00 the balance of double the amount of security deposit for this tenancy.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 on a balance of probabilities, the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention 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.

The parties agree that the glass stove top was damaged in 2014. The tenant testified that the damage was caused by the self-cleaning function of the stove. The parties agree that the damage was reported to the landlord when it first occurred in 2014.

I find that there is insufficient evidence to conclude that the damage to the stove was caused by the tenant's violation of the *Act*, regulations or tenancy agreement. As the party making the claim the onus is on the landlord to show on a balance of probabilities that the loss and damage arose as a direct result of the tenant's negligence. I find, based on the totality of the evidence submitted by the parties, that the landlord has not sufficiently met this onus. I find that there is insufficient evidence to show that the tenant was operating the glass top stove in an unreasonable manner. I find that the landlord's email correspondence to a third-party maintenance provider in 2014 also characterizes the damage as arising from routine operation of the stove by the tenant. I find that the landlord has provided insufficient evidence to show that the damage to the glass stove top arose as a result of the tenant's breach of the *Act*, regulation or tenancy agreement. Consequently, I dismiss the landlord's claim.

As the tenant was successful in her application, the tenant is entitled to recover the \$100.00 filing fee for this application.

Conclusion

The landlord's application is dismissed.

I issue a Monetary Order in the tenant's favour in the amount of \$1,400.00 against the landlord on the following terms:

Item	Amount
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Double Security Deposit (\$800.00 x 2)	\$1,600.00
Less Security Deposit Returned	-\$300.00
Filing Fees	\$100.00
Total	\$1,400.00

The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: June 15, 2017

Residential Tenancy Branch