



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

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

The landlord did not attend this hearing which lasted approximately 40 minutes. The tenant attended the hearing and was given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that she served the landlord with the tenant's application for dispute resolution and evidentiary materials on March 15, 2017 by registered mail sent to the service address provided by the landlord. The tenant provided a Canada Post tracking number as evidence of service. I find that the tenant's application for dispute resolution and evidentiary materials were deemed served on the landlord in accordance with sections 88, 89 and 90 of the *Act* on March 20, 2017, five days after mailing.

At the outset of the hearing, the tenant made an application requesting to amend the monetary amount of the claim sought. The tenant testified that the amount provided in the Monetary Order Worksheet is correct and that the amount listed on the application for dispute resolution erroneously does not list the full amount of her claim. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as the full amount claimed is listed in the Monetary Order Worksheet and correcting a transcription error could be reasonably foreseen, I allow the tenant to increase the tenant's monetary claim from \$1,350.00 to \$8,657.75.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of the security deposit and pet damage deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to a monetary award for damages as claimed?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant provided undisputed testimony regarding the following facts. This fixed term tenancy originally began in September, 2015. Monthly rent is \$1,350.00 payable on the first. A security deposit of \$675.00 and a pet damage deposit of \$675.00 were paid by the tenant at the start of the tenancy and are still held by the landlord. The rental unit is one half of a duplex building. The unit was advertised as a two bedroom suite. The tenancy agreement provided that the landlord would have access to a storage shed located outside, adjacent to the rental unit, where he could store his vehicles.

The tenant testified that the landlord would frequently attend on the rental property to access his vehicle in the storage shed. The tenant said that the landlord would come by the rental property on a daily basis and enter the storage shed at all hours including in the night. The tenant said that the landlord's irregular visits would alarm her dog causing it to bark and growl disturbing the tenant. The tenant said that she witnessed the landlord entering the storage shed and he would not emerge for several hours if at all.

The tenant testified that on June 5, 2017 she was informed by her neighbor who occupied the adjoining duplex suite that based on the floorplan of the building the rental unit should be a three bedroom suite. The tenant said that she and her neighbor discovered that there was a hidden suite accessible through the storage shed. The tenant concluded that the landlord was occupying this suite without her knowledge.

The tenant believes that this hidden suite provides access to the attic and crawlspace of the rental unit. The tenant is unaware of any instances where the landlord used the hidden suite to access the rental unit. The tenant said that the landlord had represented the rental unit as being one-half of the building and had not mentioned this hidden suite at any time. Because there are only two power meters, one for each half of the duplex, the tenant believes that the landlord was using the heat and electricity from the rental unit without her knowledge or authorization.

The tenant felt uncomfortable continuing the tenancy because the landlord did not disclose his contact address or the existence of this hidden suite adjoining the rental unit. The tenant gave notice to end the tenancy and the tenancy ended on June 30, 2016. The tenant provided a forwarding address to the landlord in writing on June 27, 2016. The tenant testified that she did not give written permission that the landlord may retain any amount of the security deposit and pet damage deposit.

In the Monetary Order Worksheet, the tenant claimed the following amounts:

Item	Amount
Security Deposit	\$675.00
Pet Damage Deposit	\$675.00
Photocopying and Preparation of Evidence	\$19.07
Canada Post Mail Forwarding Service (June 2016 – Oct 2017)	\$142.70
Portion of BC Hydro Bills for Tenancy Sept 2015 – June 2016 (\$451.78 x 35%)	\$158.12
Portion of Fortis BC Bills for Tenancy Sept 2015 – June 2016 (\$679.60 x 35%)	\$237.86
General Damages (Equivalent of 5 months rent)	\$6,750.00
TOTAL	\$8,657.75

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit and pet damage 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 and pet damage 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 accept the tenant's undisputed evidence that the tenant provided a forwarding address in writing on June 27, 2016. I accept the evidence that the landlord has not made an application claiming against the security deposit and pet damage deposit during the 15 day time frame granted under section 38(1)(c) of the *Act* nor has he returned the

deposits during that time. I accept the tenant's evidence that she has not waived the 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 \$2,700.00 Monetary Order, double the value of the security deposit and pet damage deposit paid for this tenancy. No interest is payable over this period.

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 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. Pursuant to section 7(2) of the Act the claimant must take reasonable steps to attempt to mitigate the loss suffered.

I find there is insufficient evidence that there has been a breach of the Act, regulation or tenancy agreement. The tenant provided testimony and submitted into written evidence photographs of the storage shed that she believes serves as an entrance into a secret suite. The photographs provided show a storage shed adjacent to the rental building and a door leading into the rental building. I find this to be insufficient evidence to conclude that there is a hidden suite and that the landlord resided within it on the rental property. The tenant did not provide into written evidence floor plans for the rental building or photographs showing what lies beyond the door in the storage shed. The tenant explained that she did not confront the landlord regarding the hidden suite as she was concerned about his reaction and therefore had little physical evidence. However, the tenant said that the suite was discovered with the assistance of a neighbor but the neighbor did not attend the hearing to provide testimony or submit a sworn statement in support. I find there is insufficient evidence to support the tenant's position that there was an additional suite adjacent to the rental unit in which the landlord resided.

Furthermore, the tenancy agreement provides that the tenant was renting a two bedroom unit. The tenant confirmed that she was provided with a suite as promised in the tenancy agreement. Section 28(c) of the Act provides that a tenant is entitled to exclusive possession of a rental unit. Even if I was to find that there was a secondary suite adjacent to the rental unit, I find there is insufficient evidence that the tenant's right to exclusive use was breached by the landlord. The tenant testified that she is unaware of the landlord entering the rental unit without her knowledge. The tenancy agreement provides that the landlord may access the storage shed located outside of the rental

unit. I find there is insufficient evidence that the landlord breached the *Act*, regulations or tenancy agreement. If there was an additional suite, adjacent to the rental unit, I do not find the landlord's failure to disclose its existence or his occupancy to be a breach of the *Act*, regulations or tenancy agreement giving rise to damage and loss for which the landlord can be held liable. Consequently, I dismiss the portion of the tenant's claim for general damages.

I find there is insufficient evidence in support of the tenant's claim for the BC Hydro and Fortis BC bills. The tenant testified that she was unaware that the utility bills were higher than should be expected for a two bedroom suite. I find that on a balance of probabilities the tenant has not shown that there was a breach of the *Act*, regulation or tenancy agreement which resulted in damage or loss, in this case higher utility bills, stemming from the breach. As a result, I dismiss this portion of the tenant's claim.

I do not find that there is sufficient evidence in support of the tenant's claim for mail forwarding for 16 months. I find that this is part of the expected cost of moving residences. As I have found that there is insufficient evidence to find that the landlord breached the *Act*, regulation or tenancy agreement, I am unable to find that the costs related to moving out of the rental unit are a loss for which the landlord can be held liable.

I accept the tenant's evidence that she incurred costs of \$19.07 in preparing her present claim and issue a monetary award in that amount.

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

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$2,819.07 against the landlord in the following terms.

Item	Amount
Double Security Deposit (2 x \$675.00)	\$1,350.00
Double Pet Damage Deposit (2 x \$675.00)	\$1,350.00
Photocopying and Preparation of Evidence	\$19.07
Filing Fee	\$100.00
TOTAL	\$2,819.07

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 2, 2017

Residential Tenancy Branch