



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") 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;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on December 10, 2016. The landlord's agent (the landlord confirmed receipt of the package. The landlord stated that late evidence was submitted to the tenant on June 7, 2017, just two days prior to the hearing date. The landlord was unable to provide any reason why documentary evidence was provided contrary to the rules of procedure. The tenant confirmed receipt of the late evidence and objected to the 14 pages from being allowed for the hearing. The tenant was unable to provide any explanation of why the landlord's evidence should be excluded save that it was late.

On the late submission of the landlord's documentary evidence, I find that although late, the tenant offered no reasonable explanation of why the documentary evidence should be excluded other than it was late. The tenant did not identify any issues in responding to the landlord's documentary evidence after having reviewed it. As such, I accept the undisputed affirmed testimony of both parties and find that both parties have been properly served with the notice of hearing package and the submitted documentary

evidence of both parties. It was also clarified with both parties that the tenant may voice any concerns or objections arising of the late evidence if required during the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss, return of double the security deposit and recovery of the filing fee?

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 applicant's claim and my findings are set out below.

This tenancy began on August 23, 2012 on a fixed term tenancy until August 30, 2013 as shown by the submitted copy of the signed tenancy agreement dated August 5, 2012. A new tenancy was entered into beginning on September 1, 2015 on a fixed term tenancy ending on August 31, 2016 as shown by the submitted copy of the signed tenancy agreement dated August 20, 2016. The monthly rent was \$1,510.00 payable on the 1st day of each month. The security deposit of \$737.50 was carried over from the previous agreement. Both parties confirmed that the tenancy ended on August 10, 2016 and that the landlord received the tenant's forwarding address in writing on August 16, 2016.

The tenant seeks a monetary claim of \$10,674.15 which consists of:

\$4,800.00	Compensation for Non-Compliance of an RTB Order (Providing a copy of the Strata Bylaws to the Tenant)
\$1,400.00	Compensation for Non-Compliance of an RTB Order (Facilitating the tenant's online access to obtain a copy of the Strata Bylaws)
\$350.00	Compensation for Non-Compliance of an RTB Order (To repair or replace...dishwasher, by April 15, 2016)
\$2,579.15	Compensation for Non-Compliance of an RTB Order (To repair or replace...garburator and fridge, by April 15, 2016)

\$70.00	Compensation, Recovery of Appliance Technician Service Evaluation
\$1,475.00	Return of Original \$737.50 Security Deposit and Compensation, Sec. 38(6) Failing to Comply

The tenant clarified that she was seeking compensation of \$4,800.00, \$1,400.00, \$350.00 and \$2,579.15 from the landlord for failing to comply with the Residential Tenancy Branch Order Granted on March 29, 2016 in which the landlord was ordered to:

1. To Provide the tenant with a copy of the strata Bylaws and, if applicable, "Rules" and "Regulations", by not later than midnight, Friday, April 15, 2016.
2. To facilitate the tenant's online access to the above by the same deadline.
3. To repair or replace, as required, the tenant's garburator, dishwasher and fridge, by not later than midnight, Friday, April 15, 2016.

The tenant provided undisputed affirmed testimony that the tenant was not provided with a copy of the strata by-laws nor did the landlord facilitate online access for the tenant to the same strata by-laws. The tenant stated that the only item replaced by the landlord is the garburator. The landlord did not dispute the tenant's claims, only stating that a technician was hired who inspected the appliances and had replaced the garburator. The landlord reported upon assessment by the technician that the dishwasher and the refrigerator were fine and functioning normally. Both parties agreed that the tenant notified the landlord on April 4, 2017 via Text Message of the issue. The tenant disputes this stating that after she noted food spoiling in her refrigerator and had hired her own technician on August 6, 2016 to assess the refrigerator after receiving no action from the landlord as shown in the submitted copy of the technicians invoice. The invoice clearly states that \$70.00 was charged and it was a "Diagnosis" in which the Fridge Door had a gap and required a fix to the seal. A notation was made that a return trip to fix the seal would require an additional \$155.00. The landlord disputed this stating that he had hired a technician who notified him that there were no issues with the refrigerator. The landlord stated that he had an invoice from the technician confirming this, but had failed to provide it to the Residential Tenancy Branch.

The tenant also stated that the landlord has failed to return her \$737.50 security deposit after receiving her forwarding address in writing on August 16, 2016. The landlord confirmed that the \$737.50 security deposit was not returned to the tenant after receiving the tenant's forwarding address in writing on August 16, 2016. The landlord stated that the money was held in dispute over unpaid rent for the 10 days that the

tenant over held the rental unit past August 1, 2016. The landlord stated that an agreement was made with the tenant to retain the security deposit in lieu of the 10 days of rent owed. The tenant disputed this stating that there was no such agreement. The landlord was unable to provide any supporting evidence of an agreement to retain the security deposit in lieu of returning the security deposit. The landlord confirmed that an application to retain the security deposit was not made.

Analysis

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.

During the hearing it was clarified with both parties, that as the Arbitrator in this hearing, I do not have the authority to impose an Administrative Penalty against the landlord for failing to comply with a Decision or Order. It was also clarified with both parties that any such Administrative Penalty imposed by the Director would not be given as compensation to the other party. The tenant's application for compensation of:

\$4,800.00	Compensation for Non-Compliance of an RTB Order (Providing a copy of the Strata Bylaws to the Tenant)
\$1,400.00	Compensation for Non-Compliance of an RTB Order (Facilitating the tenant's online access to obtain a copy of the Strata Bylaws)
\$350.00	Compensation for Non-Compliance of an RTB Order (To repair or replace...dishwasher, by April 15, 2016)
\$2,579.15	Compensation for Non-Compliance of an RTB Order (To repair or replace...garburator and fridge, by April 15, 2016)

for failing to comply with the order of March 29, 2016 are dismissed.

On the tenant's claim for recovery of the \$70.00 for a diagnosis of the deficient refrigerator, I find that the tenant is successful. Both parties confirmed in their direct testimony that the landlord was informed of a deficient refrigerator. Both parties confirmed that the landlord had a technician inspect the refrigerator. The landlord claimed that no repairs were necessary. The tenant has claimed that the refrigerator required new seals as shown on the submitted copy of the invoice from her technician. The landlord has failed to provide any supporting evidence that the refrigerator was not deficient. As such, I find that the tenant has provided sufficient evidence to satisfy me that the refrigerator was deficient requiring the replacement of the seals. The tenant has established a claim for recovery of the \$70.00 charge.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, both parties confirmed that the tenancy ended on August 10, 2016 and that the tenant provided her forwarding address in writing to the landlord on August 16, 2016. The landlord provided direct testimony confirming that the \$737.50 security deposit is still held by the landlord as of the date of this hearing and that no permission was given by the tenant, nor has the landlord applied for dispute to retain the security deposit. As such, I find that the tenant is entitled to return of the original \$737.50 security deposit. I also find pursuant to section 38 (6) of the Act that as the landlord failed to return the original security deposit or file an application for dispute to retain it, the landlord is liable to an amount equal to the security deposit of \$737.50.

The tenant has established a total monetary claim of \$1,545.00.

As the tenant has only partially been successful in her application for dispute, I award the return of only \$50.00 of the filing fee.

Conclusion

The tenant is granted a monetary order for \$1,595.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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: July 05, 2017

Residential Tenancy Branch