



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 was convened in response to an application by the tenant filed January 20, 2017 pursuant to the *Residential Tenancy Act* ("Act") for:

- return of their security deposit - Section 38;
- recover their filing fee for this application from the landlord - Section 72
- other

Solely the tenant attended the conference call hearing. I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the Act the landlord did not participate in the conference call hearing. The tenant provided proof of mail registration inclusive of the tracking number for the registered mail sent to the landlord on January 24, 2017 to the address provided by the landlord within the tenancy agreement for service upon them. Pursuant to Sections 89 and 90 of the Act I find that the landlord is deemed to have been served with the tenants' application and notice of hearing on January 29, 2017. The tenant was given opportunity to be heard, to present evidence and to make submissions.

In addition to the tenant's request for the return of their security deposit I accept the tenant's application for compensation in the aggregate of \$476.01 identified by their application as "Other".

Issues to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The relevant undisputed evidence is as follows. The tenancy began April 15, 2015 and ended October 15, 2016. The tenancy was guided by a written tenancy agreement of which I have benefit. The agreed rent was \$1050.00 per month payable in advance on the 15th of the month.

At the outset of the tenancy the landlord collected a security deposit in the amount of \$525.00, which they retain in trust.

The tenant testified the landlord and tenant conducted a cursory *move in* inspection at the outset of the tenancy; however the landlord did not complete nor provided the tenant with a copy of a condition inspection report (CIR). At the end of the tenancy the landlord did not conduct a *move out* inspection in accordance with the Act. The tenant provided e-mail evidence they sent the landlord their forwarding address on November 27, 2016 to an address from which the landlord had communicated with the tenant days earlier. The tenant also testified that e-mail was a method and normal course by which the parties communicated.

The tenant testified that no permission was provided to the landlord to keep all their security deposit although the parties had an understanding the tenant would compensate the landlord \$100.00 for a door. As a result the tenant sought that any of their entitlement to their original security deposit be reduced in the same amount.

The tenant also seeks compensation for their costs associated with displacement from the rental unit August 24 to 29, 2016 as a result of water intrusion effectively “flooding” the rental unit.

The tenant testified that in August 2016 a purported failed toilet tank mechanism caused the water to flow unhindered throughout the rental unit and adjacent premises rendering the rental unit unfit for occupation for the displacement period. The tenant claims a plumber informed them the toilet tank failure was not due to their conduct but rather due to a lack of maintenance. The tenant is claiming camping accommodations, some camping related items and food costs for the displacement period. The tenant provided a copy of their bank account statement indicating the relevant debits in support of their claimed costs in the sum of \$476.01.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

I find that pursuant to the provisions of Sections 24(2)(c) and 36(2)(a) the landlord’s right to claim against the tenant’s security deposit was extinguished in that the landlord failed to conduct the condition inspection report requirements prescribed by the Act. I further find that pursuant to Section 71 of the Act, for the purpose of Section 38 I find the landlord received the tenant’s forwarding address on November 27, 2017.

Section 38 of the *Act* requires the landlord to either return the tenants’ deposits or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants’ provision of a forwarding address in writing. I find the landlord failed to

repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address. As a result, the Act prescribes that pursuant to Section 38(6) the landlord must pay the tenant *double* the amount of the original security deposit. The landlord currently holds the security deposit in the amount of \$525.00 and I find that they are obligated under Section 38 to return *double* this amount. Therefore, I award the tenant \$1050.00, from which I deduct \$100.00 as per the tenant's request to permit the landlord to retain this amount, for a resulting award of **\$950.00**.

In respect to the balance of the tenant's monetary claim I find the tenant has not provided sufficient evidence to establish the landlord's conduct or neglect in contravention of the Act resulted in the tenant's loss vis a vis their displacement costs. None the less, I accept that the tenant did not receive the accommodations for which they paid rent during the period of 6 days they were displaced August 24 to 29, 2017. Therefore, I find it appropriate the tenant be compensated in the pro-rated amount representing 6 days of the payable rent in the sum of **\$203.22** ($\$1050.00 \div 31 = \$33.87 \times 6 \text{ days}$). As the tenant was successful in their application I further grant the tenant their filing fee of \$100.00 for a sum award of **\$1253.22**.

Conclusion

I grant the tenant a monetary Order in the amount of **\$1253.22**. 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.

The tenant's application in relevant part has been granted.

This Decision is final and binding.

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 18, 2017

Residential Tenancy Branch