



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0846930 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, OLC

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 double his security deposit pursuant to section 38; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The landlords did not attend this hearing, although this teleconference hearing lasted 34 minutes beyond the scheduled starting time for this hearing at 1:30 pm. The tenant and his legal advocate attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant gave sworn testimony that he served all three landlords with his dispute resolution hearing package by registered mail sent on March 17, 2017. At the hearing, he provided Canada Post Tracking numbers to confirm these registered mailings. He testified that Canada Post's Online Tracking system confirmed that each of these three packages were successfully delivered. He also testified that his written evidence was sent to the applicants by registered mail on May 30, 2017. I am satisfied that the above documents were deemed served to the landlords on the fifth day after their registered mailing.

The tenant testified that he handed his written notice to end tenancy to Landlord AY on January 1, 2017, after giving him oral notification of his intention to end this tenancy the day before. The tenant's advocate at that time also entered into written evidence a copy of a January 12, 2017 written notice to end tenancy to Landlord RS from the tenant and his then advocate. Both of these documents requested that the landlord

return the tenant's security deposit to the tenant at the mailing address of the tenant's advocate at that time.

The tenant applied for a monetary award of \$2,600.00 for the following items, listed in the tenant's Monetary Order Worksheet, he completed when he commenced his application:

Item	Amount
Return of Double Security Deposit (2 times \$275.00 = \$550.00)	\$550.00
Refund of January 2017 Rent	550.00
Homelessness	1,500.00
Total Monetary Order Requested	\$2,600.00

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses and damages 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 landlord's failure to comply with the provisions of section 38 of the *Act*? Should any other orders be issued with respect to this tenancy?

Background and Evidence

The tenant gave undisputed sworn testimony that this tenancy began on December 19, 2016. Although he did not sign a Residential Tenancy Agreement, he did provide a copy of a Shelter Information form from the Ministry of Social Development and Social Innovation, which apparently formed the basis for the commencement of his tenancy. He testified that his monthly rent was set at \$550.00, payable in advance on the first of each month. On December 19, 2016, he paid a pro-rated amount of \$200.00 for the remainder of December 2016, and a \$275.00 security deposit. The tenant provided a copy of his receipt for this \$475.00 payment as well as his January 2017 rent payment of \$550.00.

Although the tenant inspected the room he rented before commencing this tenancy, he testified that he was unaware of the conditions within the rental building until he moved there. He complained that the landlord's on-site property manager did not attend to his numerous complaints about the inadequate upkeep and maintenance of this rental property. Some of his complaints included concerns about inadequate heating, poor maintenance of common areas including the washroom, noise, and a persistent smell of smoke coming from others in this building who were using drugs.

After obtaining little action with respect to his complaints, the tenant gave undisputed sworn testimony that he told Landlord AY on December 31, 2016, that he intended to end his tenancy on January 31, 2017. As noted above, he followed up on that oral notice with a written notice to end this tenancy on January 31, 2017, the following day. In his written notice to end this tenancy, the tenant included a forwarding address where he asked Landlord AY to return his security deposit. The tenant gave sworn testimony that he vacated the rental unit on January 11, 2017, as his health was by then deteriorating and he could no longer remain in the rental unit.

Despite sending two written requests to obtain a return of his security deposit, the tenant testified that the landlords have never returned any portion of his \$275.00 security deposit.

The tenant's request for a return of his January 2017 rent was based on his assertion that the landlord did not properly inform him as to the condition of the rental unit when he commenced his tenancy. He was not aware that others in this rental property were drug users. He asserted that their frequent drug use impacted his own health conditions and seriously disturbed him. He said that he did not obtain the quality of rental unit he was anticipating when he agreed to rent these premises. He said that the furnace needed repairs and the minimal heat that was available was insufficient to enable him to remain in the rental unit.

The tenant maintained that he could afford any other rental accommodations after he paid rent for January 2017, and did not receive adequate accommodation. The tenant was unable to identify the basis for his requested award of a monetary award of \$1,500.00 for homelessness, one of the key elements of his monetary claim.

Analysis

While I have turned my mind to the tenant's undisputed documentary evidence, including miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and

must also pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord had 15 days after January 11, 2017, the date when the tenant vacated the rental premises to take one of the actions outlined above. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." As there is no evidence that the tenant has given the landlords written authorization at the end of this tenancy to retain any portion of the security deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

Based on the undisputed evidence before me, I find that the landlords have neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenant gave sworn oral testimony that they have not waived their rights to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlords' 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 therefore entitled to a monetary order amounting to double the value of the security deposit with interest calculated on the original amount only. No interest is payable.

Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for January 2017, the tenant would have needed to provide his notice to end this tenancy at the time he commenced his tenancy agreement, December 19, 2016. Section 52 of the *Act* requires that a tenant provide this notice in writing.

As the tenant only provided his written notice to end this tenancy on January 1, 2017, and, by his own testimony, remained in the rental unit until January 11, 2017, I find no basis whereby I can justify his claim for the recovery of the January 2017 rent he paid for this tenancy. He said that he did not provide written complaints that he submitted to the landlords about any of the issues he raised. He was only living in this rental unit for 12 days before he advised the landlord of his intention to end his tenancy. Under these circumstances, I find that the tenant did not give the landlord a proper opportunity to address the issues of concern that led to his early end to this tenancy.

In coming to this determination, I also note that the tenant did visit and inspect the rental unit and the building in which his rental unit was located before he agreed to rent these premises. While it is unfortunate that these accommodations did not measure up to the

tenant's expectations, the tenant is at least partially responsible for checking beforehand to ensure that the premises being rented match with their own expectations and standards.

Turning to the tenant's request for a monetary award for homelessness, I was unable to obtain any meaningful explanation from the tenant as to why he believed the *Act* enabled him to obtain a monetary award for this portion of his claim. In this case, the tenant issued his own notice to end this tenancy 12 days after the tenancy began. The tenant then left the rental unit 20 days earlier than the effective date of his own notice to end this tenancy. It is indeed unfortunate that the tenant was reduced to homelessness as a result of this failed tenancy. As explained to the tenant and his legal advocate at the hearing, I find that there are no provisions in the *Act* which would allow me to grant the tenant's request for a monetary award from the landlord for homelessness that arose after this tenancy ended.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$550.00, an amount equal to double the return of the security deposit. The tenant is provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: August 18, 2017

Residential Tenancy Branch