



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing, conducted by a conference call, dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of the security deposit and pet damage deposit pursuant to section 38.

As there was another hearing scheduled for the same time on the same conference call line, I advised the landlord, who had called in, to redial using a new conference call code. The other arbitrator conducted the separate hearing, which lasted approximately 40 minutes, on the original conference call line, which was left open. The only ones who called in to the original conference call line were the parties of the separate hearing.

The tenant did not attend this hearing in either the original conference call line or the alternate conference call line. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that he served his application for dispute resolution dated June 5, 2017 on June 12, 2017 by registered mail to the address for service provided by the

tenant on the tenant's application. The landlord provided a Canada Post tracking number as evidence of service. I find that pursuant to sections 88, 89 and 90 of the *Act*, the tenant is deemed served with the landlord's application and evidentiary materials on June 17, 2017, five days after mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damages and loss as claimed? ? Is the landlord entitled to retain all or a portion of the security deposit and pet damage deposit for this tenancy? Is the tenant entitled to a monetary award equivalent to double the value of his 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 landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave undisputed testimony regarding the following facts. This periodic tenancy began in May, 2016. The monthly rent was \$800.00 payable on the first of each month. A security deposit of \$800.00 was collected at the start of the tenancy and is still held by the landlord. A basic condition inspection report was prepared at the start of the tenancy and signed by the parties.

The tenancy ended by a mutual agreement to end the tenancy on February 28, 2017. The tenant did not vacate the rental unit until March 3, 2017. The landlord said that he attempted to schedule a move-out inspection but the tenant did not provide available dates and abandoned the rental unit. The landlord said that the tenant did not provide a forwarding address other than the service address provided on the tenant's application for dispute resolution. The tenant's application was served on the landlord on or about March 21, 2017.

The landlord claims the amount of \$1,838.63 for the following items:

Item	Amount
Late Fees for Rent in August and October, 2016, January and February 2017	\$580.00
Unpaid Rent February, 2017	\$100.00
Rent for March (3 days) ($\$800/31 \text{ days} = \25.8)	\$77.40
Materials for Cleaning and Repairs	\$202.23
Replacement Cost Washing Machine	\$599.00
Labour Costs	\$280.00
Total	\$1,838.63

The landlord submitted a copy of the tenancy agreement into written evidence. The agreement provides that a daily late fee of \$10.00 applies to all late rent payments. The landlord submitted into written evidence copies of receipts issued to the tenant for rent payment in the months of August and October, 2016 and January and February, 2017 to show that the tenant paid rent for those months after the first or did not pay the full rent owed.

The landlord testified that the tenant only paid \$700.00 for February rent and the arrears for this tenancy is \$100.00.

The landlord testified that because the tenant left the rental unit in a poor condition he had to incur costs to clean and repair the damages. The landlord said that the cost of materials and his time spent cleaning is \$482.23.

The landlord testified that the washing machine provided under the tenancy agreement was broken by the tenant. The landlord said that the cost of a replacement washing machine is \$599.00.

Analysis

The tenant did not attend the hearing which was scheduled by conference call at 1:30pm. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Consequently I dismiss the tenant's application without leave to reapply.

Section 19 of the *Act*, requires that a security deposit must not exceed one-half of one month's rent. In the case at hand, the \$800.00 payment exceeds the one-half limit. Section 19(2) of the *Act* allows the tenant to deduct the overpayment from rent or otherwise recover the overpayment. Therefore, I find that the \$800.00 payment was comprised of a \$400.00 security deposit and \$400.00 towards the rent for the tenancy.

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 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 and pet damage deposit as per section 38(4)(a).

I accept the landlord's testimony that the tenant first provided a forwarding address in the tenant's application for dispute resolution served on or about March 21, 2017. The landlord filed the present application to retain the security deposit for this tenancy on June 5, 2017 outside of the 15 days provided under the *Act*.

Based on the undisputed evidence before me, I find that the landlord has failed to return the tenant's deposit in full or file to retain the security deposit within the 15 days of being provided a written forwarding address in accordance with the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a \$800.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

In addition the tenant is entitled to a monetary order to recover the rent overpayment of \$400.00.

The landlord claims the amount of \$1,838.63 for loss and damages arising from 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 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.

Residential Tenancy Regulation 7(1)(d) states that a landlord may charge a fee of no more than \$25.00 for late payment of rent. I accept the evidence of the landlord that the tenant paid rent late on four occasions during the tenancy in August and October, 2016 and January and February, 2017. Accordingly, the landlord is entitled to a monetary order in the amount of \$100.00, late charges of \$25.00 each for the four late payments.

I accept the landlord's evidence that the tenant failed to pay the full rent for the month of February, 2017 and the arrears for this tenancy is \$100.00. I therefore, issue a

monetary order in the amount of \$100.00 for the rental arrears as of August 18, 2017, the date of the hearing.

Pursuant to section 57(3) of the *Act*, a landlord may claim compensation from a tenant who continues to occupy a rental unit after the tenancy has ended. Guideline 3 provides that a tenant will be liable to pay occupation rent on a *per diem* basis.

I accept the evidence of the parties that the tenancy ended by way of a mutual agreement on February 28, 2017. I accept the evidence that the tenant did not vacate the rental unit until March 3, 2017. Therefore, I find that the landlord is entitled to a monetary award for the three days of rent. Rent is calculated on a per diem basis to be \$25.80 daily and the landlord is entitled to a monetary award of \$77.40 for rent.

I find that the landlord has shown on a balance of probabilities that there was damage to the rental unit which necessitated the landlord cleaning and performing repairs. I accept the landlord's evidence that the total cost of the cleaning and replacement materials as well as the labour is \$482.23. I issue a monetary award in that amount.

I find that there is insufficient evidence in support of the landlord's claim for a new washing machine. I find that there is insufficient evidence to conclude that the washing machine was broken as a result of the tenant's violation of the *Act*, regulations or tenancy agreement. I find there is insufficient evidence to determine the cause of the washing machine malfunction. Based on the evidence submitted I am unable to find that the washing machine replacement was caused directly by the tenant and that it is a loss for which the landlord can be compensated. Consequently, I dismiss this portion of the landlord's claim.

As the landlord's claim was substantially successful, the landlord is entitled to recover the \$100.00 filing fee for this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain a portion of the tenant's security deposit in satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The tenant's application is dismissed.

I issue a monetary order in the tenant's favour in the amount of \$340.37 under the following terms:

Item	Amount
Double Security Deposit (\$400.00 x 2)	\$800.00
Rent Overpayment	\$400.00
Late Fees for Rent in August and October, 2016, January and February 2017	-\$100.00
Unpaid Rent February, 2017	-\$100.00
Rent for March (3 days) ($\$800/31 \text{ days} = \25.8)	-\$77.40
Materials for Cleaning and Repairs	-\$202.23
Labour Costs	-\$280.00
Filing Fees	-\$100.00
Total	\$340.37

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: August 18, 2017

Residential Tenancy Branch