



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF O

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on March 24, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord return all or part of the security deposit or pet damage deposit;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenant attended the hearing on his own behalf and provided affirmed testimony. The Landlord did not attend the hearing.

The Tenant testified that he served the Application package, which included the Notice of a Dispute Resolution Hearing, documentary and digital evidence, on the Landlord by registered mail on March 24, 2017. A Canada Post registered mail receipt was provided in support. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Application package is deemed to have been received by the Landlord on March 29, 2017.

The Tenant was given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
3. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence by the Tenant. It confirmed the fixed-term tenancy began on September 1, 2016, and was to end on September 1, 2017. Thereafter, the tenancy would continue on a month-to-month basis. However, the Tenant and his family vacated the rental unit on February 20, 2017. Rent in the amount of \$850.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$425.00, which the Landlord holds.

According to the Tenant, he and his family moved in with a friend because the Landlord did not address his concerns about mold forming due to a persistent leak in the ceiling. The Landlord was first notified of the leak and was sent photographs of the ceiling on or about February 9, 2017. In addition, the Tenant testified the Landlord did not address his safety concerns about snow and ice on the roof, which were communicated to the Landlord on February 13, 2017. The Tenant testified that the Landlord appeared to be avoiding communication with the Tenant.

The Tenant's claim was set out in a Monetary Order Worksheet, dated March 22, 2017. First, the Tenant claimed return of double the amount of the security deposit. He testified the Landlord was provided with his forwarding address in writing via registered mail on March 3, 2017. In support, the Tenant provided a copy of the letter with his forwarding address and requesting the return of the security deposit. In addition, the Tenant submitted a Canada Post registered mail receipt.

Second, the Tenant claimed \$30.00 as reimbursement for the cost of snow removal, which the Tenant testified was authorized by the Landlord. In support, the Tenant submitted an email to the Landlord, dated February 13, 2017, in which the Tenant advised he paid \$30.00 to D.H. for snow removal and passed along the name of an individual who could remove the ice. I note the letter also described safety concerns raised by D.H., who refused to perform the ice removal because it was "dangerous".

Third, the Tenant claimed \$77.09 for moving costs. In support, the Tenant submitted a bank statement showing payments totalling this amount for a U-Haul rental and fuel.

Fourth, the Tenant claimed \$280.00 as a partial rent reimbursement for rent to the end of February 2017, which was paid in full. The Tenant testified that he and the Landlord had come to an agreement about reimbursement, which the Landlord later reneged on.

Fifth, the Tenant claimed \$10.50 as reimbursement for mailing costs related to his Application, although the actual cost was somewhat higher.

Finally, the Tenant sought to recover the \$100.00 filing fee paid to make the Application.

Analysis

Based on the unchallenged documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Tenant's claim for return of double the amount of the security deposit, section 38 of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after the latter of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, the Tenant testified, and I find, that the Landlord was provided with a forwarding address in writing by registered mail sent on March 3, 2017. Pursuant to sections 88 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Landlord is deemed to have received the Tenant's forwarding address in writing on March 8, 2017. Therefore, the Landlord had until March 23, 2017, to return the security deposit or make a claim against the security deposit by filing an application for dispute resolution. He did not. Accordingly, I find the Tenant is entitled to an award in the amount of \$850.00, which is double the amount of the security deposit, pursuant to section 38(6) of the *Act*.

With respect to the Tenant's claim for \$30.00 for snow removal, I find the Landlord authorized the Tenant to hire someone to address the Tenant's concerns regarding snow and ice on the rental property. Accordingly, I find the Tenant is entitled to an award of \$30.00 in recovery of the amount paid for this purpose.

With respect to the Tenant's claim for \$77.09 for moving costs, I find the Tenant is entitled to an award in this amount. Despite the Tenant's attempts to have the Landlord deal with health and safety concerns, the Tenant testified the Landlord did not take any steps to address them. Accordingly, the Tenant and his family vacated the rental unit and temporarily moved in with friends.

With respect to the Tenant's claim for \$280.00 as a partial rent reimbursement, I find the Tenant is entitled to an award in the amount of \$242.86, which is the amount of rent paid by the Tenant for the eight days from February 21-28, 2017, inclusive, calculated on a pro-rated basis.

With respect to the Tenant's claim for \$10.50 as reimbursement for mailing costs, I find these expenses are discretionary and are not generally compensable under the *Act*. This aspect of the Tenant's claim is dismissed.

Having been successful, I also find the Tenant is entitled to recover the \$100.00 filing fee paid to make the Application. Accordingly, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$1,299.95, which has been calculated as follows:

Claim	Amount
Security deposit (doubled):	\$850.00
Reimbursement for snow removal:	\$30.00
Reimbursement for moving expenses:	\$77.09
Rent reimbursement (pro-rated):	\$242.86
Filing fee:	\$100.00
TOTAL:	\$1,299.95

Conclusion

I grant the Tenant a monetary order in the amount of \$1,299.95. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 21, 2017

Residential Tenancy Branch