



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD OLC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on March 31, 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 that the Landlord comply with the *Act*, regulation, or a tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf. The Landlords attended the hearing on their own behalves. All parties in attendance provided a solemn affirmation.

The Tenant testified that he served the Application package, including a Notice of a Dispute Resolution Hearing and documentary evidence, on the Landlord by registered mail on April 5, 2017. The Landlords acknowledged receipt. 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 Tenant's Application package is deemed to have been received by the Landlords on April 10, 2017.

The parties were given an 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 that the Landlord comply with the Act, regulation, or a tenancy agreement?
4. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed with respect to several terms of the tenancy. The tenancy began on June 1, 1995, and ended on March 31, 2015. Rent was due in the amount of \$900.00 per month. The Tenant paid a security deposit of \$500.00.

The Tenant's claims were set out on a monetary order worksheet, dated March 30, 2017. First, the Tenant claimed return of double the amount of the security deposit. She testified a security deposit of \$500.00 was paid directly to J.L. at the beginning of the tenancy. The Tenant submitted with her documentary evidence a hand-written note acknowledging payment of the security deposit. In addition, the Tenant testified she provided the Landlord with her forwarding address in writing on March 30, 2015. A copy of the letter, provided to the Landlord in person, was submitted with the Tenant's documentary evidence. The Tenant testified the security deposit has not been returned to her.

In reply, J.L. testified that the Landlords have not kept good records due to the passage of time. However, she stated that the security deposit was returned to the Tenant. Further, J.L. indicated the Tenant was paid compensation as required under the Act when a notice to end tenancy for landlord's use of property is issued.

Second, the Tenant claimed additional compensation because the Landlords did not take steps to accomplish the stated purpose for ending the tenancy. The parties acknowledged that the notice to end tenancy was issued on the basis that the landlord required vacant possession to perform repairs to the property. However, the Landlords listed the property for sale as of April 4, 2015. In support, the Tenant submitted into evidence a copy of a real estate listing for the rental property.

In reply, J.L. did not dispute the property was listed for sale as alleged. However, she advised that a contractor advised the Landlords that he knew a colleague who would be interested in purchasing the property. In addition, the Landlords learned that repairs would be expensive. As a result, and to simplify their lives, the Landlords listed the property for sale.

Third, the Tenant claimed \$845.25 for the cost to have her concerns about the presence of mold in the rental unit professionally investigated. During the tenancy, water leaked into the rental unit, causing damage and producing mold. The mold investigation took place on January 20, 2015. A copy of the report, dated February 27, 2015, was submitted with the Tenant's documentary evidence. The Tenant also submitted a copy of the invoice for the mold investigation.

During the hearing, the Tenant acknowledged that the notice to end tenancy was received on or about January 11, 2015. Although the Tenant did not dispute the notice to end tenancy, she proceeded with the mold inspection out of concern for her own health and safety, and for that of the cleaners or movers who would come to help her move.

Fourth, the Tenant claimed \$577.80 for rubbish removal because furniture and personal belongings were damaged by water that entered the rental unit. A receipt confirming payment for rubbish removal was submitted with the Tenant's documentary evidence.

In reply, J.L. did not dispute the condition of the Tenant's furniture and belongings at the end of the tenancy. Further, she acknowledged the rental property was in "poor condition" at the end of the tenancy but suggested the Tenant had not taken any steps to leave, implying that the living conditions could not have been as bad as claimed.

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

Analysis

Based on the 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 regard 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 Landlords were provided with a forwarding address in writing on March 30, 2015. As the tenancy ended on March 31, 2015, the Landlords had until April 15, 2015, to return the security deposit or make a claim against it by filing an application for dispute resolution. They did not. Accordingly, I find the Tenant is entitled to receive double the amount of the security deposit, pursuant to section 38(6) of the *Act*. Although this was a long-term tenancy, and the

Tenant is entitled to receive interest on the security deposit paid, Policy Guideline #17(C) confirms as follows:

Interest is calculated on the original security deposit amount, before any deductions are made, and it is not doubled.

[Reproduced as written.]

The parties agreed during the hearing that the tenancy began on June 1, 1995, and ended on March 31, 2015. Further, the parties agreed that the Tenant paid a security deposit of \$500.00 to the Landlord. Using the interest calculator available on the Residential Tenancy Branch website, I find the Tenant is entitled to interest in the amount of \$94.89. However, interest is not doubled. Accordingly, I find the Tenant is entitled to a monetary award in the amount of \$1,094.89, pursuant to section 38(6) of the *Act*.

With regard to the Tenant's claim for further compensation, section 51 of the *Act* confirms that a landlord who does not take steps to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In this case, the Tenant claimed, and J.L. acknowledged, that the Landlords listed the property for sale on April 4, 2015. However, the parties confirmed the only reason indicated for issuing the notice to end tenancy was because the Landlords required the rental property to be vacant to perform repairs. I find the Tenant is entitled to a monetary award of \$1,800.00, which is double the monthly rent payable, pursuant to section 51(6) of the *Act*.

With regard to the Tenant's claim for \$845.25 for the cost to have her concerns about the presence of mold in the rental unit professionally investigated, I find this aspect of the Tenant's Application is dismissed. The Tenant testified she received the notice to end tenancy on or about January 11, 2015. However, the investigation occurred on January 20, 2015. The Tenant did not dispute the notice to end tenancy and the tenancy ended on March 31, 2015, by operation of the *Act*. Accordingly, despite the Tenant's testimony that she was concerned about the health and safety of herself and others, I find that a report was not necessary. The Tenant had accepted the end of the tenancy and was to move out on March 31, 2013.

With regard to the Tenant's claim for \$577.80 for rubbish removal because furniture and personal belongings were damaged, I find there is insufficient evidence before me to conclude the Tenant took steps to mitigate the effects of water and mold on her belongings. This aspect of the Tenant's Application is dismissed.

Having been successful, I find the Tenant is entitled to recover the filing fee paid to make the Application. Pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$2,994.89, which has been calculated as follows:

Claim	Amount
Security deposit (doubled):	\$1,094.89
S. 51 compensation	\$1,800.00
Filing fee:	\$100.00
TOTAL:	\$2,994.89

Conclusion

I grant the Tenant a monetary order in the amount of \$2,994.89. 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 23, 2017

Residential Tenancy Branch