



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38 of the *Act*; and
- authorization to recover a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*.

Both the corporate landlord's agents and the tenant appeared at the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord's agents (the "landlords") confirmed receipt of the tenant's application for dispute resolution.

Issue(s) to be Decided

Is the tenant entitled to a return of her security deposit? If so, should it be doubled?

Can the tenant recover a monetary award from the landlord?

Background and Evidence

The parties explained to the hearing that this tenancy began on April 1, 2012 and ended on either June 30, 2017 or July 11, 2017. Rent was \$775.00 and a security deposit of \$362.50 paid at the outset of the tenancy continues to be held by the landlord.

The reason for the conflicting end of tenancy dates stems from a disagreement on the tenant's move-out date. The landlords provided submissions that they discovered the unit abandoned without notice on July 11, 2017, while the tenant said that she provided the landlords with numerous emails informing them that she would be vacating the suite at the end of June 2017.

The tenant has applied for a return of her security deposit and a monetary award as follows:

Item	Amount
Return of Security Deposit	\$362.50
Penalty of unreturned Security Deposit	362.50
Estimate for Replacement of Couch	1,279.00
Rodent infestation (November 2016 to March 2017)	3,750.00
Rodent infestation (April 2017 to June 2017)	2,000.00
Moving Costs	424.12
Total =	10,503.12

The tenant explained that she provided the landlords with notice of her intention to vacate the property on several occasions. She said that she placed a notice in the manager's mailbox and emailed him. The tenant said that she was forced to move from the rental unit because of continued issues with rodents, along with hazards associated with various types of mould and mildew in the building. The tenant provided a detailed package of submissions which explained that she had suffered from various forms of rodent infestations throughout her tenancy. She said that this infestation greatly affected her ability to enjoy the rental unit and she sought a return of the rent she paid for the times associated with the infestation. The tenant said that numerous personal items were destroyed as a result of this infestation and she requested a replacement of her couch which she explained was subject to rodent feces and urine. The tenant continued by explaining that because of the severity of the rodent infestation she had to seek counselling from a woman's counselling service in Victoria, B.C.

In addition to her monetary award related to rodent infestation, the tenant said that a flood in the rental building caused several types of mould and mildew to appear in the hallways. The tenant remarked that these items were hazardous and she sought compensation related to her exposure to these items.

At the hearing, the landlords acknowledged that they continued to hold on to the tenant's security deposit but argued they had ever been properly given notice of the tenant's intention to vacate the rental unit.

The landlords denied that there was any rodent infestation in the building and said that they had no formal complaints from any other residents. Furthermore, the landlords explained that they have a pest control company provide monthly service to the building. As part of their evidentiary package, the landlords provided a copy of a note from this pest control company who advised that there were no known rodent infestations. The tenant acknowledged that she had seen this evidence but questioned its authenticity.

The landlords agreed with the tenant that a leak from the building's boiler had occurred but explained that any resulting mould or mildew was quickly addressed by carpet cleaners who attend the property every three months. They noted that again, they had received no complaints from other tenants regarding the issues related to this flood or any resulting mould or mildew.

Analysis

Section 38 of the *Act* requires the landlord to either return a 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 and or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

I find that the landlords by their own admission, failed to apply to retain the tenant's security deposit following the conclusion of the tenancy. The landlords stated that they discovered the rental unit abandoned on July 11, 2017. The landlords therefore had until July 26, 2017 to apply to retain the tenant's security deposit. I find that they have failed to do so and must therefore pay the tenant a monetary award that is equivalent to double the value of the security deposit.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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. In this case, the onus is on the tenant to prove her entitlement to a claim for a monetary award.

The tenant explained that he suffered greatly as the result of rodent infestation in the rental building. She said that her couch was damaged beyond repair, that she had suffered emotional trauma because of the rodents and that her tenancy had become unsustainable because of the continued presence of these rodents. As part of her evidentiary package, the tenant provided a USB stick depicting photos purporting to show rodent feces in her rental unit and in the rental building. While, I acknowledged the tenant's argument that she suffered a loss as a result of the precedence of rodents, I find that the images and evidence submitted to the hearing provided insufficient evidence that these rodents created such a disturbance as to warrant a return of her entire rent for the time periods requested. The tenant said she sought counselling because of issues that surfaced from the presence of rodents in the unit but failed to provide any letters from her counsellor attesting to the manner in which she was affected.

The landlords provided documentation from a recognized pest control company which stated there were "no issues to report." The tenant alleged that this document and information was false; however, failed to provide any evidence of this allegation. I find that while rodents may have been present in the rental at one point, little evidence was submitted indicating that their presence was as widespread as described by the tenant. For these reasons, I dismiss this portion of the tenant's application for return of rent she had paid.

The tenant has also applied for a monetary award for the replacement of a couch and the related moving expenses because mould, mildew and rodents caused her vacate the apartment. I find that the value of the couch for which the tenant has claimed compensation does not accurately reflect the quote for a new couch she submitted to the hearing. The tenant explained that the couch in her apartment was used when she took possession of it in 2012 or 2013. The tenant did not provide any evidence as to its value when acquired but claimed it was ruined due to rodent infestation. A person can

only be granted compensation under section 67 of the *Act* when that they can provide evidence that can verify on the balance of probabilities, the actual monetary amount of the loss or damage. I find the quote submitted to the hearing for the replacement of a couch (which was already in a used condition when the tenant took possession of it either five or six years ago), does not accurately reflect an actual monetary amount of loss. For these reasons, I find that the tenant has failed to demonstrate her claim for a new couch.

Furthermore, I find that the tenant vacated the rental unit on her own volition and was under no obligation to leave. I find that the landlords are not responsible for any related moving costs. For these reasons, I dismiss this portion of the tenant's monetary application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$725.00 against the landlord. 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.

Item	<u>Amount</u>
Return of Security Deposit (2 x 362.50)	\$725.00
Total =	\$725.00

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: February 22, 2018

Residential Tenancy Branch