



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: MNDC, OLC, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$11,555
- b. An order that the landlord comply with the Act, regulations and/or tenancy agreement.
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on January 31, 2018. I find that the Amendment to the Application for Dispute Resolution was served on the landlord by mailing, by registered mail to where the landlord resides on March 7, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

On August 31, 2016 the parties entered into a one year fixed term tenancy agreement that became month to month after the fixed term. The rent was \$1150 per month payable in advance on the first day of each month. The Tenant paid a security deposit of \$575 at prior to the start of the start of the tenancy.

The tenancy ended on January 31, 2018. The tenant provided the landlord with his forwarding address in writing on January 31, 2018.

The tenant testified the landlord failed to return the security deposit. He also testified the parties have not agreed in writing that the landlord can keep the security deposit, the landlord has not filed a claim within 15 days of January 31, 2018 and the landlord does not have a monetary order against them.

Analysis:

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenants paid a security deposit of 575 prior to the start of the tenancy. The tenancy ended on January 31, 2018. I further determined the tenants provided the landlord with their forwarding address in writing on January 31, 2018. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. As a result I determined the tenants have established a claim against the landlord for double the security deposit or the sum of \$1150 ($\$575 \times 2 = \1150).

The tenant makes a number of other monetary claims against the landlord.

Section 7 of the Act states as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline #16 includes the following:

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

...

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

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The tenant provided a 14 page summary of his claims which has been carefully considered. The tenant's witness confirm much of the testimony of the tenant. The landlord's witness confirm the landlord's evidence of several points that he was familiar with. With regard to each of the remaining Tenant's claims I find as follows:

- a. The tenant seeks compensation in the sum of \$2000 for the failure of the landlord to provide him with a copy of the lease in a timely fashion. The tenancy agreement was signed on August 31, 2016. The tenant testified he did not get a copy of it until November 24, 2017. His life would have been less stressful if he had a copy. He would have known about the obligations of the landlord to make repairs and the requirement to have an emergency contact. The landlord testified he thought he had provided the tenant with a copy of the tenancy agreement. I determined the tenant failed to prove he has suffered a loss because of the failure to provide a copy of the tenancy agreement. I determined the tenant is entitled to nominal damages in the sum of \$50 for this claim.
- b. The tenant claims compensation in the sum of \$1500 because of the landlord's failure to remove the previous tenant's belongings. In particular a large chair was left next to the entrance way for 17 months. Boxes were left for about 5 months. The tenants were denied access to storage in the garage for 2 months. The tenant's wife testified that on a couple of occasions she fell because of the clutter. I determined the landlord failed to prove there was an oral agreement the belongings could be left there. I determined the tenant is entitled to compensation in the sum of \$250 for these claims.
- c. The tenant seeks compensation in the sum of \$500 for the landlord's failure to re-install the closet door in the master bedroom for 3 months. As a result cooking smells got into their clothes. The landlord testified it was a custom door and it took a period of time to find a replacement. I determined the tenant is entitled to \$50 for this claim.
- d. The tenant claims \$2700 for the reduced value of the tenancy caused by the problems with the bathroom fan. The tenant testified the fan ran continuously and it was difficult to sleep. The landlord showed him how he could unplug the fan. However, once it was unplugged he was not able to restart the fan and the bathroom fogged up when showering. After 5 months the landlord hired an electrician who fixed the fan very quickly and there was no further problem. The landlord testified the fan problem exists through the 100 unit complex. Further the tenant stated it was okay after he showed the tenant how to unplug the fan. I determined the tenant is entitled to compensation in the sum of \$100 for this claim.
- e. The tenant claims \$200 for disruptions caused by the landlord showing the rental property for sale on 12 occasions. The tenant testified the landlord's agent represented there would only be 2 showings. The landlord provided a letter from the real estate agent stating that he never represented there would only be 2 showings. Further, the tenant often failed to respond to his attempts to contact

him. I dismissed this claim as I determine that the tenant failed to prove there was an unreasonable disruption.

- f. The tenant claims \$3500 because of problems with the bathtub draining. The problem lasted for about 5 months. Eventually after many complaints the landlord hired a plumber who vacuumed the tub on Feb. 8, 2017 and there were no further problems. The landlord testified this is a common problem in the complex. Further the use of drano solved the problem for a period of time and he thought the tenants satisfied with the solution. In the circumstances I determined the tenants are entitled to compensation in the sum of \$250 for this claim.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1850 plus the sum of \$100 in respect of the filing fee for a total of \$1950.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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: March 30, 2018

Residential Tenancy Branch