



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1111683 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act"):

The landlord sought:

- a monetary order for loss, damage and money owed under the tenancy agreement pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant sought:

- a return of their security deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their testimony and to make submissions. The corporate landlord was represented at the hearing by landlord A.M., agent K.L. and property manager M.M., while the tenant represented herself at the hearing.

Both parties acknowledged receipt of each other's applications for dispute resolution and evidentiary packages and I find that each party was duly served in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a return of her security deposit?

Can the landlord recover a monetary award?

Is either party entitled to a return of the filing fee?

Background and Evidence

Evidence was presented by both parties that this tenancy began on September 1, 2017 and ended on February 28, 2018 by way of Mutual Agreement to End Tenancy. Rent for the unit was \$4,000.00 and a security deposit of \$2,000.00 paid at the outset of the tenancy, continues to be held by the landlord.

The tenant has applied for a return of her security deposit. She explained that a condition inspection report was completed by the parties on February 28, 2018. In this report, the tenant did not agree to surrender any part of her security deposit and the tenant provided a copy of her forwarding address to the landlord in writing. The landlord acknowledged receiving this information but noted that the tenant initialed a portion of the agreement which reads, "the security deposit will not be returned to the tenant until dispute is resolved through the Residential Tenancy Branch."

The landlord has applied for a monetary award of \$790.17 which he argued was the amount outstanding for unpaid utilities during the tenancy. Specifically, the landlord said that water, recycling, sewage and garbage had not been paid by the tenant as per the terms of their tenancy agreement and addendum. A copy of both documents was supplied to the hearing. Section for of the addendum marked 'Utilities Payments' states that, "utilities are not included in the rent. The tenant is responsible to arrange immediately with the relevant supply companies for all accounts for gas, electricity, telephone, cable, alarm monitoring, and internet/cable at the property to be address to the tenant...In some municipalities (i.e. W.V.) the quarterly bill for water and sewer utility is the responsibility of the tenant and based on their usage." The addendum continues by noting that "the tenant pay 100% of utilities." Furthermore, a close examination of the standard form tenancy agreement reveals that while offered as an option, garbage collection was not included with rent.

The tenant disputed the landlord's application, arguing that water, recycling, sewage and garbage were not to be considered as "utilities" and she believed these items related to property taxes which she said were the responsibility of the landlord. In addition, the tenant said she was "rushed" when she was signing the tenancy agreement and did not fully consider all of the terms contained within.

Analysis – Tenant's Application

Section 38 of the *Act* requires the landlord to either return a tenant's security in full or file for dispute resolution for authorization to retain the security deposit 15 days after the *later* of the end of a tenancy, or upon receipt of a 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 a 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).

Evidence presented at the hearing showed that the landlord received the tenant's forwarding address in writing on February 28, 2018. The landlord therefore had until March 15, 2018 to apply to retain the tenant's security deposit. There is little evidence that the landlord did so, and the landlord acknowledges that he continues to retain the tenant's security deposit. Pursuant to section 38 of the *Act*, the tenant is entitled to a monetary award of \$4,000.00, equivalent to a doubling of her security deposit which the landlord continues to hold.

The landlord argued that the tenant agreed in writing at part Z of the condition inspection report that the landlord may retain the tenant's security deposit until resolution of the matter before the Residential Tenancy Branch. I do not accept this argument, and find that this is an attempt by the landlord to circumvent the landlord's responsibilities under section 38 of the *Act*. If the landlord had a concern about unpaid utilities, he should have applied to retain the tenant's security deposit within 15 days or receiving the tenant's forwarding address in writing or within 15 days of the end of the tenancy.

As the tenant was successful in her application, she may recover the filing fee associated with the application.

Analysis – Landlord's Application

The landlord has applied for a monetary award of \$790.17 related to utilities that he argued were unpaid at the end of the tenancy. Specifically, the landlord sought compensation for water, recycling, sewage and garbage. The tenant disputed that she should have to pay for these items, arguing that they were related to property tax and therefore beyond the realm of what she should be expected to pay for as a tenant.

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 landlord to prove their entitlement to a monetary award.

A review of the tenancy agreement and the addendum signed by the parties notes that the tenant agreed to pay 100% of utilities which included, "gas, electricity, telephone, cable, alarm monitoring and internet/cable...tenant agrees to pay all charges for these utilities. In some municipalities (i.e. W.V.) the quarterly bill for water and sewer utility is the responsibility of the tenant and based on their usage." As mentioned previously, a review of the standard tenancy agreement signed by the parties reveals that garbage collection was not included with rent.

After reviewing the evidence submitted at the hearing, and considering the oral testimony of all parties present, I find that the tenant was responsible for a portion of the utilities for which the landlord is seeking compensation. The addendum signed by the parties notes that water and sewage are the responsibility of the tenant if they reside in a certain municipality. The home which the tenant previously rented is not found in the municipality named in the addendum, and therefore the landlord has no recourse to compensation related to water or sewage. However, I find that the standard terms of the tenancy agreement contained a section which noted that garbage collection was not included with rent. It is therefore reasonable to conclude that the tenant was expected to pay for the garbage collection as it was deemed a standard term which was not included with rent. As no specific breakdown of the utilities was provided by the landlord, I will award him half of the requested amount, representing a return of funds required for garbage collection and recycling.

As the landlord was partially successful in his application, he may recover the filing fee associated with the application.

Pursuant to section 72 of the *Act*, the landlord's monetary award will be put against the monetary award issued to the tenant.

Conclusion

The filing fees will be offset against one another.

I issue a Monetary Order in the tenant's favour in the amount of \$3,604.91 against the landlord based on the following monetary awards:

ITEM	AMOUNT
Return of Security deposit with penalty under section 38 (2 x \$2000)	\$4,000.00
Less Monetary Award to Landlord for garbage collection/recycling (\$790.17/2 = \$395.09)	(-\$395.09)
TOTAL =	\$3,604.91

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.

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: May 16, 2018

Residential Tenancy Branch