



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, OLC, LRE, MNDC, FF

Introduction

This hearing was reconvened following a hearing on April 30, 2018. An Interim Decision from that hearing was issued on May 1, 2018 (the “Interim Decision”) providing interim compensation and adjourning the hearing to allow the Tenant to make an amendment for damages that were continuing from the Landlord’s failure to comply with a previous decision dated March 12, 2018 and for the return of the security deposit. In the Interim Decision the Tenant was ordered to serve the Notice of this Reconvened Hearing to the Landlord.

The Landlord did not attend this reconvened hearing. The Tenant clarified that the address used for service on the Landlord was the Landlord’s address as provided to the Tenant by the Landlord on a mutual agreement to end tenancy and as submitted for the previous hearing resulting in the decision dated March 12, 2018. The Tenant clarifies that the Interim Decision sets out in error that the Landlord’s address was contained on a notice to end tenancy for cause. The Tenant states that it sent the Notice of Reconvened Hearing to the same address as on the mutual agreement to end tenancy by registered mail on May 10, 2016. The Tenant states that the mail was returned marked “moved” however the Tenant continued to believe that the Landlord was still at that address and sent a second package by registered mail on June 27, 2018. This package was collected.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail and of the second package being collected at the same address as the first registered package, I find that both packages were served as required under the Act and that the Landlord has been deemed to have received both packages. The Tenant was given full opportunity under oath to be heard, to present evidence and to make submissions.

The Tenant did not amend the application to increase the monetary claim. The Tenant states that he sat down with an agent at the Residential Tenancy Branch (the “RTB”) with all the materials to make the amendment, explained that he needed to file the materials for the adjourned hearing and that the agent took the materials. The Tenant assumed that the agent amended the application as the agent did not give the Tenant any form to complete other than a form for substituted service.

Rule 4.2 of the RTB Rules of Procedure provides that in circumstances that can be reasonably anticipated, such as when the amount of rent owing has increased since the time the application for dispute resolution was made the application may be amended at the hearing. Although the Tenant was to have made the amendment prior to the reconvened hearing, as the amendment was primarily for losses that were continuing to accrue from the original breach and the original application, as the Landlord was given the Tenant’s forwarding address for return of the security deposit prior to the Interim Decision, given the apparent oversight on filling out a form, and as the Interim Decision clearly set out that losses were continuing from the date of the Interim Decision and notes the claim for return of the security deposit, I find that there is no prejudice to the Landlord in amending the Tenant’s application at this hearing to increase the monetary amount being claimed. I also consider that the circumstances of a greater claim could be reasonably anticipated. I therefore amend the application to increase the monetary amount being claimed.

Issue(s) to be Decided

Is the Tenant entitled to additional compensation?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The Interim Decision sets out the full set of facts leading to the claims on the remaining damages that have accrued since the Landlord locked the Tenant out of the unit despite an order of the RTB cancelling the Landlord's notice to end the tenancy. The Interim Decision grants the Tenant compensation for hotel accommodation to April 17, 2018 and for laundry, food, infant food and supplies, emergency clothing and personal item costs to April 12, 2016. The Tenant provides a monetary order worksheet detailing the continuing costs and receipts for all costs claimed as set out below.

The Tenant claims continuing hotel costs from April 18 to May 13, 2018, the date of his move to a rental home in the total amount of **\$4,698.54**.

The Tenant claims storage costs of **\$309.70** accrued after the Landlord provided the Tenant with access to his belongings at the storage company and to the date of his move to a rental home for the period April 30 to May 13, 2018.

The Tenant claims moving costs incurred on May 13, 2018 of **\$77.02** for the truck and **\$25.00** for the fuel.

As the Tenant had too many personal items and a child to transport between the different hotels that he had to stay in the Tenant could not take a bus between the sites and had to hire a taxi. The Tenant claims this cost of **\$20.76**.

The Tenant claims grocery and personal care items for the period April 13 to May 13, 2018 in the total amount of **\$368.02**.

The Tenant states that the current rental situation in the lower mainland is publicly known to be in crisis and that there are few available rentals for any reasonable amount of rent. The Tenant received only 5% return calls on his rental inquiries. The Tenant states that he had no reason to expect he would have to find alternate rental accommodation in the current market and was not prepared for such a move. The Tenant states that he was required to pay a higher rental amount than he was prepared for and argues that this unexpected cost was caused by the Landlord's failure to comply with the previous decision of March 12, 2018. The Tenant claims the increased rental amount over one year of **\$600.00**. This amount is based on a \$50.00 increase of the monthly rent that is now being paid by the Tenant.

The Tenant states that his new rental accommodation does not include in-suite laundry as was included in his previous rental. For the same reasons as stated above the Tenant claims the increased laundry cost over a year of **\$624.00**. The Tenant states that this amount is calculated on 3 laundry loads per week at a combined cost of \$4.00 per load for both washing and drying. The Tenant states that his laundry requirements are primarily for his infant child.

The Tenant states that the Landlord was told by the storage company that the Landlord was not supposed to store food items in the storage as the building contained rodents. The Tenant states that despite this warning the Landlord put the entirety of Tenant's food in storage. By the time the Tenant was able to retrieve his belongings the perishable foods had gone bad and the storage company told the Tenant to dispose all food items that were in the storage unit. In addition to the lost food, the Landlord caused other personal items to be missing or damaged. The Tenant provides a list of these items and claims a total loss of **\$1,910.00**.

Since the Tenant provided its forward address by registered mail on April 12, 2018 the Landlord the Landlord has neither returned the security deposit of \$600 nor made an

application claiming against the security deposit. The Tenant claims return of double the security deposit in the amount of **\$1,200.00**.

The Tenant states that he has not yet had time to consider additional losses, such as aggravated damages, associated with the Landlord's act to lock the Tenant out of his home and asks that he be given further opportunity to do so.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. As the Tenant acted to find another rental as soon as possible and accepting the evidence of a current difficult rental market, I find that the Tenant acted reasonably to minimize the damages caused by the Landlord's breach. Based on the undisputed evidence of continuing costs associated with the Landlord's refusal to act in compliance with the previous Decision of March 12, 2018, given the detail of those costs accompanied by receipts for all costs claimed, and considering that the Tenant had no time to save funds for a more expensive accommodation in the current market, I find that the Tenant is entitled to the hotel, grocery, storage, transportation and moving costs claimed in the total amount of **\$8,633.04**.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the undisputed evidence that the Tenant provided its forwarding address on April 12,

2018 I find that the Landlord had until April 27, 2018 to either return the security deposit in full to the Tenant or to make a claim against the deposit. Based on the undisputed evidence that the Landlord did neither I find that the Landlord must now pay the Tenant double the security deposit plus zero interest of **\$1,200.00** for a total entitlement of **\$9,833.04**.

Given the emergency circumstances faced by the Tenant over the past couple of months I accept that the Tenant requires more time to consider other losses, separate and distinct from those already dealt with in this Decision and the interim Decision, as associated with the Landlord's refusal to comply with an order of the RTB. The Tenant remains at liberty to make an application for dispute resolution for claims on losses that are separate and distinct from the losses dealt with in this and the Interim Decision.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$9,833.04**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: July 20, 2018

Residential Tenancy Branch