



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

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

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package and written evidence by registered mail, I find that the landlord was duly served with these materials in accordance with sections 88 and 89 of the *Act*. Although the landlord testified that she had lots of written evidence to support her assertions and to refute the tenant's application, the landlord did not submit any written evidence for this hearing.

During this hearing, both parties had considerable difficulty in refraining from interrupting one another. Both parties also had considerable difficulty in following directions as to how the hearing process would proceed and despite my constant reminders were unable to limit themselves to the issues identified in the tenant's application currently before me. The landlord, in particular, wanted to raise issues that had no bearing on the tenant's application for a monetary award.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses and money owed arising out of this tenancy? Is the tenant entitled to a monetary award for the return of her security deposit? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant gave undisputed sworn testimony that she moved into this rental unit on or about December 25, 2017. Although the landlord did not create a written Residential Tenancy Agreement as the Act requires her to do, the parties agreed that monthly rent of \$750.00 was due on the first of each month, commencing on January 1, 2018. The landlord continues to hold the tenant's \$300.00 security deposit paid in December 2017.

The landlord gave undisputed sworn testimony that she notified the tenant on or about March 2, 2018 that she was in the process of selling the rental property to other owners. The landlord said that she told the tenant that she would have to move out of the property before May 3, 2018, when the new owners would be taking possession of the property. Both parties agreed that the landlord did not issue any written notice to end this tenancy on the Residential Tenancy Branch's (the RTB's) 2 Month Notice to End Tenancy for Landlord Use of Property (the 2 Month Notice) form required to end a tenancy for this reason. A 2 Month Notice properly completed on March 2, 2018, could not have obtained an end to this tenancy until May 31, 2018.

The testified that she stopped living at the rental unit by May 1 or May 2, 2018. The landlord said that the tenant vacated the rental unit on May 3, 2018, at which time the landlord agreed to the tenant's request to help her remove her belongings and possessions from the rental unit for transport to another location.

The tenant testified that she paid monthly rent for March and April 2018; the landlord said that the tenant did not pay monthly rent for April 2018.

The tenant said that she had initially requested a payment equivalent to two month's rent for the landlord's notification that the tenancy was ending. The tenant gave undisputed sworn evidence and written evidence in the form of a \$1,050.00 cheque from the landlord dated May 3, 2018. This cheque indicated that the landlord was

providing it to the tenant for "rent back March + \$300 damage deposit." Both parties agreed that the landlord stopped payment on this cheque after giving it to the tenant.

The landlord said that a number of issues had arisen with the tenant, and the cancellation of the cheque took into account the extra expenses the landlord had incurred as a result of the tenant's actions. At many times during this hearing, the landlord alleged that the tenant was lying about everything.

The tenant testified that she provided the landlord with her forwarding address for the provision of her security deposit by May 20, 2018. The landlord's sworn testimony varied on when she received the tenant's forwarding address. At one point, the landlord said that she had the tenant's forwarding address by May 13 or 14; later in the hearing she corrected this testimony to say that she had the tenant's forwarding address by June 13 or 14. Both parties agreed that the landlord continues to hold the tenant's security deposit and that the landlord never received the tenant's written authorization to keep that deposit. The landlord confirmed that she has not applied to the RTB to retain the tenant's security deposit.

The tenant's application for a monetary award of \$1,800.00 did not include a Monetary Order Worksheet providing a breakdown of the various parts of the tenant's monetary claim. However, the tenant's application indicated that the tenant was seeking a monetary award of \$1,500.00, the equivalent of two month's rent for the landlord's unauthorized actions in removing her possessions and belongings outside the rental unit when the tenant was forced to move out of this rental unit. The tenant supplied photographs and a video confirming that the landlord and people the landlord had hired moved some of her belongings outside the building where others could access her belongings. The tenant said that she lost lots of her personal possessions, including documents and dresses, and that some of her furniture was lost or broken during the removal of these items from the rental unit. The tenant also maintained that people came into the house to access her rental unit without her permission as part of this moving process.

The landlord testified that the tenant approached the landlord for help in moving her belongings as the tenant had not made arrangements to remove them before the new owners took possession. The landlord said that she arranged for people to assist the tenant with the tenant's move, at the landlord's expense. The landlord denied leaving the tenant's materials outside or having possession of any of the tenant's belongings.

Analysis

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. Section 7(1) of the *Act* establishes that a party who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the other party for losses that result from that failure to comply.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord has not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address. By May 3, 2018, when this tenancy ended and the tenant had vacated the rental unit, it is clear that the landlord intended to return the tenant's security deposit in full to the tenant, as the landlord provided the tenant with a cheque for \$1,050.00 on that date. As noted above, this cheque specifically noted that it was partially intended as a return of the tenant's security deposit. While the landlord still had time to return the security deposit even after she stopped payment on the cheque she had issued to the tenant, the landlord did not return the security deposit in full within 15 days of June 14, 2018, by which time the landlord said she had received the tenant's forwarding address.

There is also no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The landlord also testified that she did not obtain the tenant's written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

The following provisions of Policy Guideline 17 of the RTB's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit with interest calculated on the original amount only. No interest is payable over this period. This results in a monetary award of \$600.00 in the tenant's favour for this item.

Although tenants who receive a valid 2 Month Notice from landlords on the required RTB forms are entitled to a monetary award equivalent to one month's rent, there is undisputed evidence from the parties that the landlord did not issue any such written notice. As such, the tenant is not entitled to a monetary award pursuant to section 51(1) of the *Act* for the landlord's provision of a 2 Month Notice.

Without receipts or more significant evidence from the tenant with respect to the items allegedly lost during the final phases of this tenancy, I can only consider issuing the tenant a nominal monetary award. The RTB's Policy Guideline 16 provides guidance to arbitrators as to different types of awards that can be issued for damage or loss arising out of a tenancy. This Policy Guideline reads in part as follows:

...An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided...

“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...

It is the landlord's responsibility to know the law regarding tenancies as part of doing business as a landlord. The landlord's testimony revealed a striking disregard for the Act and the responsibilities that flow from renting property to tenants in this province. There is undisputed evidence that the landlord did not end this tenancy by issuing a proper Notice to End Tenancy in writing on RTB authorized forms. I find that the landlord's actions in enforcing this illegal end to this tenancy prior to transferring ownership to new purchasers may very well have led to losses that the tenant incurred. While the tenant did not provide sufficient evidence to demonstrate her entitlement to a monetary award equivalent to two month's rent, based on a balance of probabilities, I find that the tenant is entitled to a nominal award of \$200.00 to reflect items that may have been broken or have gone missing for which the landlord bears responsibility.

As the tenant has been successful in this application, I allow the tenant to recover the \$100.00 filing fee for this application from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$900.00 under the following terms. This amount is intended to enable the return of double the tenant's security deposit, a nominal award for losses arising out of this tenancy, and to recover the filing fee.

Item	Amount
Return of Double Security Deposit as per section 38 of the Act (\$ 300.00 x 2 = \$600.00)	\$600.00
Nominal Award for Losses Arising out of this Tenancy	200.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$900.00

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: July 31, 2018

Residential Tenancy Branch