



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT MNSD FFT

Introduction

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

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- a monetary award for damages and loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties were represented at the hearing by their respective agents who were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were represented service was confirmed. The parties each confirmed receipt of the other's evidentiary materials. The landlord confirmed receipt of the tenant's application for dispute resolution dated December 18, 2017. Based on the undisputed testimonies I find that the parties were served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties agree on the following facts. This fixed term tenancy began on August 16, 2017 and ended on October 31, 2017. The monthly rent was \$2,600.00 payable on the first of each month. The written tenancy agreement provides that electricity is not included in the monthly rent.

A condition inspection report was prepared by the parties at both the start and end of the tenancy. A security deposit of \$1,300.00 was paid at the start of the tenancy. The tenant gives written authorization for the landlord to deduct \$125.00 from the security deposit for carpet cleaning costs in the move-out inspection report. The parties confirm that the landlords returned to the tenants \$981.05, deducting an additional \$193.95 from the security deposit without the tenant's written authorization.

The tenant seeks a monetary award in the amount of \$1,796.15 for the following items:

| Item | Amount |
|--|-------------------|
| Return of Balance of Security Deposit | \$318.95 |
| Penalty for Withholding Security Deposit | \$1,300.00 |
| BC Hydro Utility Bills | \$177.20 |
| TOTAL | \$1,796.15 |

The tenant submits that they should not have had to pay the BC Hydro bills as this was a short term tenancy. The tenant confirms that the tenancy agreement states that electricity bills are not included in the rent.

The tenant confirms that they gave written authorization that the landlord may retain \$125.00 from the security deposit but did not authorize any further deductions.

The landlord submits that the additional \$193.95 deducted from the security deposit consists of the following items:

| Item | Amount |
|---|---------------|
| Late Fees for September and October, 2017 (\$25.00 x 2) | \$50.00 |
| Rent Arrear August, 2017 | \$8.00 |
| Unpaid BC Hydro Bill | \$33.95 |
| BC Hydro Administration Charge | \$25.00 |
| Additional Cleaning Cost | \$75.00 |

| | |
|--|-----------------|
| Electronic Transfer Fee for Returning Security Deposit | \$2.00 |
| TOTAL | \$193.95 |

The landlord submits a tenant ledger in support of their deductions.

The landlord confirmed at the start of the hearing that they believe that this is a tenancy that falls under the jurisdiction of the *Residential Tenancy Act*. The landlord was asked multiple times if they wished to make a jurisdictional argument and they declined saying that the matter falls within the authority of the *Act*. At the end of the hearing the landlord contradicted their earlier statements and mentioned that this is a furnished, temporary suite where the *Act* does not apply.

Analysis - Jurisdiction

Section 4(e) of the *Act* provides that the *Act* does not apply to living accommodation occupied as vacation or travel accommodation. While the landlord confirmed throughout the hearing that they believe that this tenancy falls under the jurisdiction of the *Act*, at the very end of the hearing they mentioned that as this is a furnished, short-term rental suite, the *Act* does not apply.

I find that there is insufficient evidence to find that this is not a tenancy to which the *Act* applies. The landlord testified throughout the hearing that this is a tenancy within the jurisdiction of the *Act*. When invited to make submissions regarding jurisdiction at the outset of the hearing the landlord declined to do so. The landlord did not make cogent or detailed submissions at the end of the hearing when they raised the possibility of the *Act* not applying to this tenancy.

The central point of the landlord's submission appears to be that because the rental unit is furnished and the term of the tenancy was for a matter of a few months this should be considered a vacation accommodation. I do not find the landlord's submission to be convincing. While the written tenancy agreement states that the *Act* does not apply and this is to be considered a travel accommodation, the landlord said that this was a standard form agreement used for all of their tenancies. The landlord collected a security deposit from the tenants, performed a condition inspection at both the start and end of the tenancy and conducted themselves as one would for a tenancy. The landlord charged the tenant a monthly rent and charged a daily rent based on a per diem calculation arising from the monthly amount. The landlord required the tenant to pay for electricity by contracting with the utility company directly. I find that based on

the evidence this was not a vacation or travel accommodation and was a tenancy that falls under the jurisdiction of the *Act* and the RTB.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

The tenant claims the amount of \$177.20 for the BC Hydro utility bills they paid throughout the tenancy. The tenant submits that this was a short term tenancy and they should not have been made to contract with a utility company and pay the utilities. I find that there is no basis for a monetary award for this portion of the tenant's claim. The tenant signed a tenancy agreement that clearly states that the tenant is responsible for the electricity. There is evidence that the parties discussed the possibility of the landlord including the utilities but no agreement was made. While the tenant may feel that they could have gotten a better deal, regret does not establish a basis for a monetary claim. The parties entered into an enforceable agreement and the tenant paid their own utility bills as required under the agreement. I find that there is no violation by the landlord which gives rise to a claim for recovery of the utilities paid. I dismiss this portion of the tenant's application.

Section 38 of the *Act* requires the landlord to either return the 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 or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must 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 permission to keep all or a portion of the security deposit as per section 38(4)(a).

The parties agree that this tenancy ended on October 31, 2017 and that the tenant provided a forwarding address in writing by a letter dated November 17, 2017. The landlord returned the amount of \$981.05 to the tenant by electronic transfer by

November 22, 2017. The tenant had given written authorization that the landlord may retain \$125.00 from the security deposit.

While the landlord gave evidence about why they feel they are entitled to deduct an additional amount from the security deposit they have not filed an application for authorization to retain the deposit. A landlord may not simply make a unilateral decision to deduct whatever sum they feel they are entitled to without taking the appropriate steps under the *Act*.

The landlord made reference to matters including the rent arrears, additional time to clean the rental unit than estimated, and the cost of returning the deposit to the tenant electronically. I find the landlord's submissions to be irrelevant to the matter at hand. The landlord has not filed an application for authorization to recover any of the amounts they now raise from the security deposit. The undisputed evidence of the parties is that the tenant has not authorized the landlord to deduct anything more than \$125.00 from the security deposit.

If the landlord had concerns about the condition of the rental unit at the end of the tenancy and sought to recover their losses from the security deposit they ought to have filed an application for dispute resolution in accordance with the *Act*. A landlord cannot simply withhold the security deposit for a tenancy without following the appropriate legislative steps. I find that the landlord has failed to return the full amount of the security deposit owed the tenant without the tenant's authorization or filing an application to claim against the deposit.

The undisputed evidence of the parties is that the tenant provided the landlord with a forwarding address on or about November 17, 2017. Therefore, the landlord had within 15 days from that date to either return the amount of the security deposit owed or file an application to retain it. A landlord cannot simply hold the security deposit for purposes that were not agreed to by the tenant.

Under the circumstances, and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a monetary award in the amount of \$387.90, double the amount of \$193.95 withheld by the landlord without authorization. No interest is payable over this period.

As the tenant's application was successful the tenant is also entitled to recover the \$100.00 filing fee for their application.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$487.90 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.

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: August 2, 2018

Residential Tenancy Branch