



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 21 HOLDINGS 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:

- a monetary order for compensation for damage or loss 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;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties were represented at 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. The corporate landlord was represented by its two agents of whom AM (the "landlord") primarily spoke. The tenant was represented by their personal representatives. The representative FP (the "tenant") primarily spoke on behalf of the tenant.

As both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution dated February 10, 2018 and the evidence. The tenant's representatives confirmed receipt of the landlord's evidentiary materials. Based on the undisputed testimonies I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the tenant's personal representatives testified that the tenant passed away on April 21, 2018. The personal representatives testified that they are the parents of the tenant and are the personal representatives empowered to administer the tenant's estate.

During the hearing the tenant testified that their application for a monetary award contained a calculation error and applied to amend the figure sought. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as correcting a calculation error is reasonably

foreseeable I amend the tenant's application to decrease the monetary claim from \$1,750.00 to \$1,690.00.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the security deposit for this tenancy?

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

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in June, 2017. The tenant paid a security deposit of \$850.00 at the start of the tenancy and it is still held by the landlord.

The rental unit flooded in December, 2017 due to a leak from the unit above. The tenant was provided alternate accommodations in another unit in the rental building.

The tenant seeks a monetary award in the amount of \$1,690.00 for the following items:

Item	Amount
Personal Belongings Damaged by Flood	\$790.00
Locker Cancellation	\$35.00
BC Hydro Transfer Fee	\$15.00
Return of Security Deposit	\$850.00
TOTAL	\$1,690.00

The tenant's representatives testified that due to the flooding several personal items were destroyed and no longer usable. The representatives testified that the items lost include a rug, a mattress and a sleeping bag. Photographs of the damaged items were submitted into evidence as well as replacement costs from online catalogs.

The tenant submits that they incurred costs as a result of moving from the original rental unit to another. The tenant seeks the cost of cancelling the storage locker and the fee associated with moving their BC Hydro account.

The landlord submits that the flooding of the rental unit was caused by a leak in the unit upstairs from the subject rental unit. The landlord said that all reasonable accommodations were made for the tenant when the leak occurred and they determined that the rental unit was not occupiable. The landlord said that the tenant's father provided written authorization by an email on January 25, 2018 that the landlord could retain the security deposit at the end of the tenancy. The landlord submitted into written evidence the email exchange between the landlord and the tenant's father, the personal representative RP where they agree to the conditions.

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.

I find that the tenant has provided insufficient evidence that the damages they have suffered flow from a negligent act on the part of the landlord. The parties agree that there was flooding in the rental unit in December, 2017. I find that there is insufficient evidence to conclude that the flooding, and the damages to the tenant's items which resulted, were a result of the landlord's violation. Similarly, I do not find that the cost of transferring utilities or the storage to be costs that were incurred as a direct result of the landlord's violation. The evidence before me is that the rental unit was uninhabitable due to the flooding which occurred. The tenant would have been required to relocate in any event and the cost of moving is not a cost borne because of the landlord. In the absence of sufficient evidence to show that the damages suffered by the tenant were a direct result of the landlord's negligent actions or inaction I am unable to determine that the tenant is entitled to a claim for damages.

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. 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).

I accept the evidence that on January 25, 2018 the landlord and the tenant's personal representative exchanged email correspondence detailing how the security deposit was to be handled. The pertinent portion of the correspondence provides that:

I will summarize our conversation here, please let me know if you are agree or like to make any changes...

...landlord has a right to hold on to the deposit to cover cost of renting the unit to the new tenant

The tenant's personal representative writes:

I agree to these conditions

I find that this email exchange constitutes a written authorization provided by the tenant's representative to retain the security deposit.

While the tenant submitted that they were confused as to what deposit the correspondence referred to at that time, the undisputed evidence before me is that only one deposit was ever paid. Therefore, I find that the terms as set out in the email exchange to be an unambiguous authorization by the tenant allowing the landlord to keep the full security deposit. As such, I find that the tenant has no basis for claiming a return to a security deposit they have already authorized the landlord may retain. I dismiss this portion of the tenant's claim.

As the tenant's claim was not successful the tenant is not entitled to recover the filing fee for their application.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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: September 10, 2018

Residential Tenancy Branch