



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNRT, FFT

Introduction

This decision pertains to the tenant's application for dispute resolution made on August 30, 2018 under the *Residential Tenancy Act* (the "Act"). The tenant's application was accepted by the Residential Tenancy Branch on September 5, 2018.

The tenant seeks a monetary order for the return of her security and pet damage deposits and for recovery of the filing fee, pursuant to sections 38(1) and 72(1) of the Act, respectively.

A dispute resolution hearing was convened at 1:30 P.M. on January 7, 2019, and the tenant attended the hearing, was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The landlord did not attend.

The tenant testified that she served the landlord with a Notice of Dispute Resolution Proceeding package (the "Notice") by Canada Post registered mail on September 7, 2018. The Notice was returned unclaimed. A photograph of the mailed package was submitted into evidence by the tenant. Based on the oral and documentary evidence of the tenant I find that tenant served the landlord pursuant to, and in compliance with, section 89(1)(c) of the Act.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Preliminary Issue: Amendment of Monetary Claim

The tenant's application sought compensation under section 38(1) of the Act for the return of her security and pet damage deposits, compensation under section 67 for the cost of a toilet and shower related expenses that the landlord had agreed to the tenant paying for, and compensation for the filing fee under section 72(1) of the Act.

Upon reviewing the file, however, it appeared that the tenant filed a Monetary Order Worksheet on December 24, 2018, in which an additional claim in the amount of \$7,400.00 was added for breach of the tenant's right to quiet enjoyment under section 28 of the Act.

An amendment occurs when an applicant seeks to add to, alter, or remove claims in the original application. In this case, the tenant added a new claim under section 28 of the Act. In order for an applicant to amend their application they must, pursuant to Rule 4.1 of the *Rules of Procedure*, under the Act, complete an Amendment to an Application for Dispute Resolution form, and, file the completed form and supporting evidence with the Residential Tenancy Branch.

Rule 4.2 of the *Rules of Procedure* permits an amendment to an application "in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made." In this case, the tenant's amendment is one that ought to have been made at the time of her original application. It is an entirely new claim made some time after the original application was made, and the tenant was unable to explain why this claim could not have been made at the time of the original application.

As such, I do not permit this amended claim and dismiss this aspect of the claim with leave to reapply. The tenant is at liberty to reapply in respect of this claim.

Issues

1. Is the tenant entitled to a monetary order for the return of her security and pet damage deposits?
2. Is the tenant entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The tenant testified that they commenced tenancy on June 1, 2017 and ended the tenancy on July 31, 2018. Monthly rent, due on the first of the month, was in the amount of \$1,200.00. The tenant paid a security deposit of \$600.00 and a pet damage deposit of \$300.00. Submitted into evidence was a copy of the written tenancy agreement.

At the end of the tenancy, the tenant provided their forwarding address to the landlord in writing, by enclosing it in an envelope and attaching it to the landlord's door, on July 31, 2018. Submitted into evidence was a photograph of the envelope wedged in between the door and the door frame. She also testified that she sent the landlord her forwarding address by way of text message. The tenant testified that there was no written agreement between the parties permitting the landlord to retain any, or all, of the security deposit.

The tenant testified that the landlord returned \$450.00 of the security and pet damage deposit on August 13 or August 14, 2018, with a balance of \$450.00 left unreturned.

In addition to the above claim, the tenant testified that the landlord agreed to the tenant purchasing new toilet flushers (that is, the inside-the-tank plunger with chain) and two new shower heads, which cost \$95.00. The tenant submitted a receipt into evidence.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the tenant is making a claim for compensation for the return of the balance of the security and pet damage deposit, and a claim for compensation for the cost of the toilet- and shower-related expenses.

Section 38(1) of the Act states as follows:

Except as provided in subsection (3) of (4) (a), within 15 days after the later of

- (a) the date the tenancy ends,
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Subsection 38(4)(a) of the Act permits a landlord to retain an amount from a security deposit or a pet damage deposit if the tenant agrees in writing that the landlord may retain the amount to pay a liability or an obligation of the tenant.

In this case, I find that the tenant has established on a balance of probabilities that the landlord received the tenant's forwarding address in writing on July 31, 2018, and there is no evidence before me to find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits. Further, the tenant testified that there was no agreement in writing between the parties permitting the landlord to retain any amount from the security and pet damage deposits.

As such, taking into consideration all the oral and documentary evidence and undisputed testimony of the tenant, I find that the landlord did not comply with section 38(1) of the Act, and therefore grant the tenant a monetary award of \$450.00 for the return of her security and pet damage deposits.

Further, section 38(6) of the Act states that where a landlord fails to comply with section 38(1), the landlord may not make a claim against the security deposit or any pet damage deposit and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Having found that the landlord failed to return \$450.00 of the security and pet damage deposits in compliance with section 38(1) of the Act, I further find that the landlord must pay the tenant double the amount of the security and pet damage deposits not properly refunded for a total of \$900.00.

In respect of the tenant's claim for compensation related to the cost of the toilet plunger and shower heads, I find that while the tenant has not met the onus of establishing that they are owed compensation under section 33 of the Act for emergency repairs, I do find that they are entitled to compensation under section 32 of the Act.

Section 32 of the Act states that a landlord “must provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.”

A landlord is responsible for ensuring that toilets and showers operate. The landlord agreed to the tenant paying for costs that are ordinarily borne by a landlord, and as such, the tenant is entitled to compensation to recoup the cost of the toilet plungers and shower heads in the amount of \$95.00. Therefore, pursuant to section 67 and 32 of the Act, I grant the tenant compensation in the amount of \$95.00 for the above-noted expenses.

As the tenant was successful in her application I grant her a monetary award in the amount of \$100.00 for the recovery of the filing fee.

Given the above, and pursuant to section 67 of the Act, I grant the tenant a monetary order in the amount of \$1,095.00($\$900.00 + \$95.00 + \$100.00 = \$1,095.00$).

Conclusion

I grant the tenant a monetary order in the amount of \$1,095.00, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

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: January 7, 2019

Residential Tenancy Branch