Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDCT 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 his security deposit pursuant to section 38;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 1:49 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant provided sworn, undisputed testimony that she had served the landlord with this application for dispute resolution hearing package ("Application") and evidence by way of Registered Mail on September 7, 2018. In accordance with sections 88, 89, and 90 of the Act, I find that the landlord was deemed served with the tenant's application and evidence on September 12, 2018, five days after mailing. The landlord did not submit any written evidence for this hearing.

Issues(s) to be Decided

Is the tenant entitled to the return of their security deposit?

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

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

Background and Evidence

This tenancy began on April 1, 2013. Monthly rent was set at $1,600.00 at the beginning of the tenancy The landlord had collected a security deposit in the amount of $800.00 at the beginning of the tenancy, and continues to hold this deposit. The tenant provided her forwarding address to the landlord on August 12, 2018

Both parties signed a new tenancy agreement on March 28, 2015 for a fixed term tenancy for the period of April 1, 2015 ending on April 1, 2016. Rent remained the same at $1,600.00 per month. The tenant testified in the hearing that rent was increased on July 1, 2017 to $1,750.00, but the tenant could not recall what form she had received from the landlord in January of 2017.

The tenancy ended on July 31, 2018 when the tenant moved out pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated May 1, 2018, with an effective date of July 31, 2018. The reason provided on the 2 Month Notice was that "the rental unit will be occupied by the landlord or the landlord's spouse or close family member (father, mother, or child) of the landlord or the landlord's spouse". A copy was included as part of the tenant's evidence.

The tenant applied for a monetary order as set out in the table below:

Item	**Amount**
Refund of additional rent paid for period of July 1, 2017 to July 31, 2018 ($150.00 x 12 months)	$1,800.00
Compensation for increased rent paid for new home ($750x8 months)	6,000.00
Return of Security Deposit	800.00
Compensation for Loss of Use of Dishwasher	500.00
Filing Fee	100.00
Total Monetary Order Requested	**$9,200.00**

The tenant testified that she experienced issues with the dishwasher in August of 2017, and notified the landlord. The tenant testified that due to an insurance claim delay, the dishwasher was not fixed until April of 2018.

The tenant discovered that after she had moved out the landlord had sold the home instead of occupying it as stated on the 2 Month Notice. The tenant testified that she had emailed the realtor who confirmed that the home was sold by the landlord. The tenant provided copies of the listing in her evidentiary package, as well as the listing reference number.

Analysis

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 tenants 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 or pet damage 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 had not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

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.

Section 51(2) of the *Act* reads in part as follows:

Tenant's compensation: section 49 notice

> **51** (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement…
>
> (2) In addition to the amount payable under subsection (1), if
>
> (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
>
> (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
>
> the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I have considered the testimony and evidence of both parties, and I find that it was undisputed that the landlord failed to comply with section 49(3) of the *Act*. The tenant provided sufficient, undisputed evidence to support that the landlord sold the home instead of occupying the rental unit as indicated on the 2 Month Notice. Accordingly, I find that the tenant is entitled to compensation equivalent to double the monthly rent as required by section 51(2) of the *Act* for the landlord's noncompliance. I issue a monetary award to the tenant in the amount of $3,200.00. The tenant applied for the landlord to compensate her for the additional rent paid for her new tenancy. When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss. Although I am sympathetic that this tenancy had ended, I am not satisfied that the tenant has sufficiently supported why she should be granted additional compensation than what is allowed under section 51(2) of the *Act*. As stated above, the applicant party suffering the loss has to demonstrate that they took reasonable steps to mitigate their

loss. On this basis, I dismiss the tenant's application for additional compensation for the landlord's noncompliance beyond the amount allowable under section 51(2) of the *Act.*

Section 42 of the Act states the following about how a Notice of Rent Increase is to be given:

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

I have considered the testimony of the tenant as well as the evidentiary materials submitted. I find that the tenant's evidence is unclear as to what documentation was served to the tenant in July of 2017. The tenant referenced a document that was served to her. As that document was not submitted in evidence, I am unable to determine whether the tenant was served with a Notice of Increased Rent in accordance with the *Act* and tenancy agreement. Accordingly, the tenant's monetary application pertaining to the rent increase is dismissed without leave to reapply.

The tenant applied for compensation for the loss of use of her dishwasher, which she confirmed was due to a delay in an insurance claim. Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

> ***32*** *(1) 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.

Section 27(1) and 28 of the *Act* outlines the landlord's obligations in relation to restricting services or facilities, as well as the tenant's right to quiet enjoyment.

Terminating or restricting services or facilities

27 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

I have considered the testimony and evidence of the tenant, and while the tenant had provided testimony to support that the loss of use of the dishwasher had caused her much inconvenience, the tenant did not provide sufficient evidence to establish that the landlord failed to fulfill his obligations as required by sections 32 and 27(1) of the *Act* as stated above.

I find that despite the delay, the delay was not a direct result of the landlord's failure to comply with the *Act.* I find that the landlord had responded, but the delay was due to an insurance claim. On this basis, I dismiss the tenant's application without leave to reapply.

I allow the tenant to recover the filing fee for this application.

Conclusion

I issue a Monetary Order in the tenant's favour under the following terms which allows the tenant to recover the security deposit retained by the landlord, plus a monetary award equivalent to 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*: The tenant is also entitled to

compensation under section 51(2) of the *Act*. The remainder of the tenant's application is dismissed without leave to reapply.

Item	**Amount**
Return of Security Deposit	$800.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the *Act*	800.00
Compensation for Landlord's Failure to Comply with s. 49(3) of the *Act*	3,200.00
Recovery of Filing Fee	100.00
Total Monetary Order	**$4,900.00**

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of 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: January 18, 2019

Residential Tenancy Branch