



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SATINDER GHATAURAH and ARVIND
GHATAURAH and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC CNR DRI MNDCT FFT**

Introduction

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

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") under section 47;
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice");
- Cancellation of a Notice of Rent Increase pursuant to section 43;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- Authorization to recover the filing fee for this application, pursuant to section 72.

The tenant JR appeared for the tenants ("the tenant"). The tenant had full opportunity to provide affirmed testimony, present evidence, and make submissions. The landlord did not attend the hearing. I kept the teleconference line open from the scheduled hearing time for twenty-five minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct participant code was provided to the landlord.

The tenant testified the tenant personally served the landlord with the Notice of Hearing and Application for Dispute Resolution on January 4, 2019. The landlord filed documentary evidence on February 2, 2019.

Further to the evidence provided by the tenant and considering the filing by the landlord of documentary evidence nine days before the hearing, I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution on January 4, 2019 pursuant to section 89 of the Act.

Preliminary Issue # 1 – Withdrawal of Claims by Tenant

At the outset of the hearing, the tenant testified the tenant vacated the premises on January 16, 2019. Accordingly, the tenant withdrew his requests for orders setting aside the One Month Notice and the Ten-Day Notice.

The tenant also testified the landlord did not issue a Notice to Increase Rent. The tenant therefore withdrew his request for an order cancelling a Notice to Increase Rent.

Accordingly, I withdraw the tenant's claims in this regard.

Preliminary Issue # 2 – Amendment to Claim Relating to Security Deposit

The tenant requested authorization to add a request for reimbursement of the security deposit of \$800.00 which the tenant paid at the beginning of the tenancy. The tenant testified the landlord holds the security deposit and the tenant has not provided authority to the landlord to retain it.

Rule 4 of the *Rules of Procedure* allow for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served. At the time the tenant brought the application, the tenant had not vacated the unit and the landlord held the deposit. Subsequently, the tenant has vacated the unit and the landlord's obligation to return the security deposit arose under the Act.

Further to Rule 4, I find the landlord could reasonably have anticipated that the tenant would claim return of the tenant's security deposit. I accordingly allow the tenant to amend the application.

The tenant's application is therefore amended to allow for the tenant to apply for the return of the security deposit pursuant to section 38.

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- An order requiring the landlord to return the security deposit, pursuant to section 38;
- Authorization to recover the filing fee for this application, pursuant to section 72.

Background and Evidence

The tenant provided testimony as follows. The parties entered a fixed term tenancy for one year commencing June 16, 2018 which ended January 16, 2019 when the tenant vacated. Rent was \$1,600.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$800.00 which the landlord holds. The tenant did not provide authorization to the landlord to withhold any of the security deposit. The tenant did not submit evidence of notification to the landlord in writing of his forwarding address.

The tenant acknowledged owing the landlord \$800.00 for rent for one half of January 2019 as he occupied the unit for half of that month. The tenant testified the parties agreed the tenant would vacate on January 16, 2019.

The tenant submitted a copy of the tenancy agreement which included a section stating the landlord agreed to provide laundry services "in a few months". The tenant testified he asked the landlord many times when he would install the promised laundry facilities; the landlord never provided laundry facilities.

The tenant testified he took his family's laundry to a nearby coin operated laundry. He submitted a copy of a hand-written and signed letter from the laundry business owner which stated the tenant did his laundry there every week beginning June 2018 and that "he spend at the very least of the amount of \$40 cad. everytime he or his family member shall do their laundry" (as written).

The tenant submitted a copy of a letter to the landlord dated December 1, 2018 demanding that the landlord install the laundry services immediately. The tenant testified the landlord failed or refused to install the laundry facility during the tenancy.

The tenant clarified his claim for reimbursement of laundry expenses. He requested a monetary order in the amount of \$640.00, being reimbursement of his laundry expenses from mid-September 2018 (three months after he moved in) until mid-January 2019 when he vacated the unit, a period of 16 weeks (16 x \$40.00 a week = \$640.00).

The tenant stated the parties conducted a condition inspection on moving in and moving out. The tenant did not submit a copy of the inspection reports.

The tenant requests return of his security deposit of \$800.00.

The tenant requests reimbursement of the filing fee of \$100.00

A summary of the tenant's claim of \$740.00 follows:

ITEM	AMOUNT
Reimbursement laundry costs	\$640.00
Security Deposit – return	\$800.00
Reimbursement filing fee	\$100.00
SUB TOTAL - CLAIMED BY TENANT	\$1,540.00
Less amount agreed owing landlord (rent for one-half of January 2019)	(\$800.00)
TOTAL	\$740.00

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

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.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The primary purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred, subject to certain exceptions and qualifications.

Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. Based upon the uncontradicted testimony and evidence presented by the tenant and in consideration of the burden of proof, I find on a balance of probabilities that the tenant has established a claim against the landlord for failing to provide laundry facilities as promised in the tenancy agreement. I find the tenant has met the burden of proof in establishing a claim for laundry expenses from mid-September, three months after the tenancy started, until the tenant vacated (a period of 16 weeks). I find the tenant has met the burden of proving that he is entitled to reimbursement of \$40.00 a week for laundry expenses at a coin operated laundry as the landlord did not provide laundry facilities as promised, for a total award of \$640.00.

I therefore award the tenant **\$640.00** for reimbursement of laundry costs.

Within 15 days of the end of the tenancy, the landlord is required under the *Act* to take certain steps with respect to the tenant's security deposit upon receipt of the tenant's forwarding address. The landlord must either return the tenant's security deposit or bring an application for dispute resolution. Section 38 provides as follows:

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

- (a) the date the tenancy ends, and*
- (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.*

I accept the tenant's uncontradicted evidence that the landlord has not returned the security deposit or brought an application for dispute resolution. I also find the tenant did not provide evidence he gave his forwarding address in writing to the landlord.

As the landlord has not met the provisions of section 38(1), I order the landlord to reimburse the tenant for the security deposit in the amount of \$800.00.

As the tenant is successful in this application, I grant the tenant a monetary award in the amount of \$100.00 for reimbursement of the filing fee.

I order the landlord may retain the sum of \$800.00 for rent being the amount the tenant acknowledged owing for half of the month of January 2019,

I award the tenant a monetary order of \$740.00 summarized as follows:

ITEM	AMOUNT
Reimbursement laundry costs	\$640.00
Reimbursement filing fee	\$100.00
Security Deposit – return	\$800.00
(Less rent for one-half January 2019)	(\$800.00)
TOTAL	\$740.00

Conclusion

The tenant is granted a monetary order in the amount of **\$740.00**. The landlord is ordered to pay this sum forthwith.

The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the 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: February 11, 2019

Residential Tenancy Branch