Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PREMIER INVESTMENTS CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFL

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that he served the landlord with his application for dispute resolution in November of 2018 via registered mail. The landlord's agent confirmed receipt of the tenant's application for dispute resolution via registered mail in December of 2018. Both parties agreed that the landlord was served with the tenant's amendment to his application for dispute resolution in February of 2019 via registered mail. I find that the tenant's application for dispute resolution and amendment were served in accordance with section 89 of the *Act*.

Issue(s) to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 23, 2018 and was set to end on February 28, 2019. The tenant moved out of the subject rental property at the end of October 2018. The tenant rented a room in a multi-roomed house and shared a kitchen and bathroom with other tenants but not the landlord. Monthly rent in the amount of $1,090.00 was payable on the first day of each month; however, if the tenant did not bounce any rent cheques, the tenant was entitled to a rent rebate of $143.75 per month which would be provided to the tenant every three months. The rental rebate was comprised as follows:

- $100.00 monthly rental rebate; and
- $43.75 (cost of gym pass- receipt must be submitted).

The tenancy agreement and appendix to the tenancy agreement were entered into evidence.

An e-mail dated March 7, 2018 setting out the above was entered into evidence. The tenant confirmed that he received the March 7, 2018 e-mail. The March 7, 2018 e-mail also set out the following rebate schedule:

- End of March: $143.75
- End of June: $431.25
- End of September: $431.25
- End of December: $431.25
- End of February: $287.50

Both parties agreed that the tenant's July 2018 rent cheque bounced. The landlord entered into evidence an e-mail from the landlord to the tenant dated July 6, 2018 which stated:

> We write to advise you that your rental payment by cheque for the month of July 2018 has bounced, your tenancy is currently in default….Please also note that there will also be no further rebate program due to default. As agreed before, your rebate will no longer be valid if you are in default, which includes bounced cheques.

The tenant testified to the following facts. The tenant received the July 6, 2018 e-mail. The tenant's rent cheque bounced due to a bank error. The tenant asked the landlord to continue to give him the rental rebate since he was a good tenant and it was not his fault that his cheque bounced. The tenant spoke with an agent of the landlord on the phone who told the tenant that he would enquire with the landlord to determine if there was a possibility of allowing the tenant to continue to receive the rental rebate. The landlord's agent led the tenant to believe that he would get his rebate back but at the end of September 2018 he did not receive the next rent rebate installment. The tenant corresponded via text messages with an agent of the landlord from July to October 2018 asking if the landlord had decided if he could have his rebate back, on each occasion the landlord's agent informed the tenant that the landlord had not yet made a decision. The aforementioned text messages were entered into evidence.

The tenant testified to the following facts. The landlord informed the tenant at the end of September 2018, after the rent rebate would have been issued, that the tenant would not receive any further rent rebate.

The landlord's agent testified to the following facts. The July 6, 2018 e-mail was very clear and informed the tenant that he would no longer receive the rental rebate due to the bounced cheque. The landlord was not obligated to continue to give the tenant the rental rebate. An employee of the landlord enquired with the landlord to determine if the tenant would be able, despite the bounced cheque, to continue to receive the rent rebate. The fact that it took some time to re-confirm that the tenant was not entitled to the rental rebate does not change the tenant's responsibility and obligation to pay full rent. It was wishful thinking on the part of the tenant that he would continue to receive the rent rebate.

Both parties agree that in July and August of 2018 the landlord employed workers to clear out furniture and other belongings left in unoccupied rooms at the subject rental property. The tenant testified that during the summer workers were at the subject rental property for approximately 20 days, the majority of which fell in July and August 2018. This testimony was not disputed by the landlord's agent. The tenant entered into evidence photographs of a large quantity of bags and boxes lining the communal spaces. Both parties agree that the bags and boxes were removed the same day they were placed in the communal spaces.

The tenant testified that sometimes the workers would occupy the living room and kitchen and would spend the entire day at the subject rental property which made him feel uncomfortable and as though he could not leave his bedroom. The tenant testified

that sometimes the workers were at the subject rental property past 10 p.m. The tenant testified that he was never provided with notice as to when the workers would be at the subject rental property. The tenant e-mailed the landlord about his concerns on August 29, 2018. The landlord did not dispute receipt of this e-mail. The tenant testified that the frequent presence of the workers breached his right to quiet enjoyment.

The landlord's agent testified that the landlord had a right to hire workers to clean out the rooms at the subject rental property not occupied by tenants. The landlord's agent quoted sections 10.1 and 10.2 from the appendix to the tenancy agreement which state:

- 10.1: The Tenants agree that the Landlord may access, inspect and show suites or common area from time to time with or without prior notice on a regular basis.
- 10.2: For shared accommodation arrangements, the Tenants agree that the Landlord may access or occupy part of the property at anytime at management's sole discretion.

The landlord's agent testified to the following facts. On August 28, 2018 one of the workers at the subject rental property noticed that the door knob/lock to the tenant's room was falling off and informed the landlord. On August 28, 2018 the landlord texted the tenant and informed him that a handyman would fix the door knob/lock later that day. The text message was entered into evidence. A handyman attended at the subject rental property on August 28, 2018 and fixed the door knob/lock.

The tenant testified that he was not given proper notice of the repair and felt that his privacy was violated because the handyman had access to his room when the tenant was not there. The landlord's agent testified that the repair was an emergency repair as it was a means off access to the tenant's room. The landlord's agent testified that the landlord acted reasonably by taking immediate action to repair the door knob/lock. The tenant testified that he was aware that the door knob/lock was damaged, but he did not ask the landlord to fix it.

The tenant sent the landlord an email dated October 16, 2018 which stated:

> Well, I don't really like the way you tell me that after what you said and all the texts/emails I sent. I tried many times to be tolerant and find a fair and comfortable solution for everyone. I am done. Anyway, in this case I am breaking the lease contract between us following the violations of my tenant's rights, including the violation of my private area and my right of a quiet enjoyment. I will drop a physical confirmation of this demand with all the attachments of those last months (pictures, emails, texts)….I am obviously waiting for my deposit cheque ($545) plus the refund of the gym for the last 4 months ($43 * 4= $172.00) and

> my post-dated cheques for the months of November until February. Following this, I will leave at the end of this month (2 full weeks).

The landlord's agent confirmed receipt of the October 16, 2018 e-mail which was entered into evidence.

The tenant sent the landlord an email dated October 19, 2018 which reiterated the tenant's intent to move out of the subject rental property by October 31, 2018. The October 19, 2018 email was entered into evidence. The landlord's agent did not dispute receiving it.

The landlord's agent testified that the landlord e-mailed the tenant on October 22, 2018 and requested a meeting with the tenant on October 24, 2018 to discuss the tenant's grievances. The tenant did not reply to this e-mail. The tenant confirmed receipt of the October 22, 2018 e-mail but did not reply as he already decided to move out of the subject rental property.

The tenant entered into evidence an e-mail from the tenant to the landlord dated October 26, 2018 which stated in part:

> Hi, Following my previous emails and with no replies concerning my fair solution to give my rebate back (400$). As planned and explained. I am leaving my room [at the subject rental property] at the end of this month.

The October 26, 2018 e-mail also provided the landlord with the tenant's forwarding address. The landlord's agent denied that the landlord received the October 26, 2018 e-mail. The tenant testified that he texted the landlord with his forwarding address, the landlord's agent denied receiving the aforementioned text.

The tenant testified that he moved out of the subject rental property at the end of October 2018 and left the keys on the kitchen table. The landlord testified that the tenant did not provide a proper notice to end tenancy and that the tenant abandoned the subject rental property and did not leave the keys to the subject rental property on the kitchen table. The tenant is seeking $725.00 for loss of quiet enjoyment which equates to 20 days of rent.

The tenant testified that he moved into a new residence in November of 2018 at a rental rate of $725.00. The tenant testified that since the landlord did not tell him straight away that he would not be able to get his rent rebate back, the landlord forced him to stay at the subject rental property which was too expensive for him, for four months. The tenant

testified that he is seeking $675.00 for being forced to stay at a rental property he could not afford. During the hearing the tenant was unable to outline how the $675.00 was calculated.

The tenant testified that at the end of November 2018 he served the landlord with his application for dispute resolution via registered mail and in that package was a letter to the landlord providing his forwarding address in writing. The landlord's agent testified that the landlord received the tenant's application for dispute resolution sometime in December 2018 and that package contained an undated letter with the tenant's forwarding address on it. The landlord's agent testified that the landlord did not file an application with the Residential Tenancy Branch to retain the tenant's security deposit.

The tenant is seeking double his security deposit in the amount of $1,090.00.

The tenant testified that after he moved out the landlord tried to cash the November rent cheque he had previously provided the landlord. The tenant testified that this action from the landlord froze his account and he incurred a $25.00 banking fee. The tenant testified that he did not cancel the post-dated cheques provided to the landlord.

Both parties agreed that a move in inspection and inspection report occurred on February 24, 2019 and was signed by both parties. The landlord's agent testified that the landlord did not provide the tenant with two opportunities to complete the move out inspection because the tenant abandoned the subject rental property. The tenant testified that he did not abandon the subject rental property because he provided the landlord with notice of his intention to break the lease.

The tenant is seeking the following damages from the landlord:

Item	**Amount**
Rent rebate from July to October 2018 at a rate of $100.00 per month	$400.00
Gym refund from July to October at a rate of $43.00 per month	$172.00
Frozen bank fee	$25.00
Extra expense occurred by tenant by staying at the subject rental property instead of cheaper accommodation	$675.00
Loss of quiet enjoyment	$725.00

Doubled security deposit	$1,090.00
Filing fee	$100.00
Total	**$3,187.00**

Analysis

Monetary Claim

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that the tenant entered into a tenancy agreement with a rental rate of $1,090.00 with a rent rebate of $143.00 which was to be provided every three months as long as none of the tenant's rent cheques bounced. I find that the tenant's July 2018 rent cheque bounced. I find that whether the bounced cheque was the fault of the bank or the tenant is not relevant. The tenant acknowledged that the cheque bounced; therefore, he lost his entitlement to the rent rebate.

I find that the landlord did not breach the Act, regulation or tenancy agreement by terminating the rent rebate or offering the tenant hope that he might get his rent rebate back. I therefore dismiss the tenant's claim for the rent rebate and gym pass.

I find that the fact that the tenant was able to find cheaper accommodation elsewhere is not connected to the tenant's obligation to pay rent to the landlord under the tenancy

agreement. I find that the landlord did not force the tenant to stay at the subject rental property. The tenant signed a fixed term tenancy agreement and made the decision to stay at the subject rental property after the landlord informed him that he would not receive the rent rebate in the July 6, 2018 e-mail. I find that the tenant chose to stay at the subject rental property even though the landlord never told him that he would get the rent rebate after the bounced July 2018 rent cheque. I therefore dismiss the tenant's claim for $675.00.

I find that in failing to cancel the post-dated rent cheques provided to the landlord, the tenant failed to mitigate his damages and so I dismiss his claim for the $25.00 bank fee relating to a frozen account.

Loss of Quiet Enjoyment

Section 29 of the *Act* states:

> **29** (1)A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
>
> (a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;
>
> (b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
>
> (i)the purpose for entering, which must be reasonable;
>
> (ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
>
> (c)the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
>
> (d)the landlord has an order of the director authorizing the entry;
>
> (e)the tenant has abandoned the rental unit;
>
> (f)an emergency exists and the entry is necessary to protect life or property.
>
> **33** (1)In this section, **"emergency repairs"** means repairs that are
>
> (a)urgent,

(b)necessary for the health or safety of anyone or for the preservation or use of residential property, and
(c)made for the purpose of repairing
(i)major leaks in pipes or the roof,
(ii)damaged or blocked water or sewer pipes or plumbing fixtures,
(iii)the primary heating system,
(iv)damaged or defective locks that give access to a rental unit,
(v)the electrical systems, or
(vi)in prescribed circumstances, a rental unit or residential property.

I find that the repair of the door knob/lock was an emergency repair as defined under section 33(1)(c)(iv) of the *Act* as the door knob/lock gave access to the tenant's room. I therefore find that the landlord was permitted to enter the subject rental property under section 29(1)(f) as failing to repair the door knob/lock put the personal property of the tenant at risk.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a)reasonable privacy;
(b)freedom from unreasonable disturbance;
(c)exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
(d)use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Policy Guideline 6 states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable

disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

I find that the frequency and duration of the presence of the workers at the subject rental property unreasonably disturbed the tenant for the months of July and August 2018. I find that section 10.1 and 10.2 of the Appendix to the Tenancy Agreement are unhelpful give that section 5 of the *Act* states:

> 5 (1)Landlords and tenants may not avoid or contract out of this Act or the regulations.
> (2)Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 28 of the *Act* affords all tenants the same protection, no matter what their tenancy agreements state, as pursuant to section 5 of the *Act*, landlords and tenants may not contract out of the *Act.*

I find that while the tenant was disturbed by the presence of the workers, he was still able to reside at the subject rental property and so is not entitled the full return of his rent for the days the workers were at the subject rental property. I find that the tenant is entitled to a 10% rent reduction for the months of July and August 2018 for a total rent reduction of $218.00.

Security Deposit

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to 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 authorization to retain all or a portion of the security deposit to offset damages or losses

arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the testimony of both parties. The tenancy ended at the end of October 2018. The tenant provided the landlord with his forwarding address in writing in the same package as his application for dispute resolution which was received by the landlord sometime in December 2018. The landlord retained the tenant's security deposit and did not file an application with the Residential Tenancy Branch to retain the tenant's security deposit.

The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. The tenant testified that he provided the landlord with his forwarding address via e-mail and text. The landlord denied receiving them. The e-mails and text messages entered into evidence do not show that the landlord responded to the e-mail or text threads containing the tenant's forwarding address. I therefore find that the tenant has not proved, on a balance of probabilities, that the landlord received his forwarding address via text or e-mail. In any event, text and e-mail communications are not recognized as valid means of service under section 88 of the *Act.*

I find that a forwarding address only provided to the landlord in the application for dispute resolution package does not meet the requirement of a separate written notice and is not deemed as providing the landlord with the tenant's forwarding address in writing under section 38 of the *Act.* I find that the date of the landlord's receipt of this decision, will become the ordered date the landlord received the tenant's forwarding address in writing. The landlord has 15 days from the date the landlord receives this decision to either file an Application with the Residential Tenancy Branch to retain the tenant's security deposit or return the tenant's security deposit to him. If the landlord does neither of these actions, the tenant may be awarded double his security deposit, in accordance with section 38(6) of the *Act.* Based on the above, the tenant's application for double his security deposit it dismissed with leave to reapply.

As the tenant was successful in this application, I find that he is entitled to recover the $100.00 filing fee from the landlord pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant under the following terms:

Item	Amount
Loss of quiet enjoyment	$218.00
Filing Fee	$100.00
TOTAL	**$318.00**

The tenant is provided with this 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: April 2, 2019

Residential Tenancy Branch