



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ZAM ENTERPRISES LTD.
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes MNDCT, MNSD

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant applied for the return of double their security deposit, and for money owed or compensation for damage or loss under the *Act*.

The tenant and a tenant advocate HB ("advocate") appeared at the teleconference and were affirmed. The hearing process was explained to the tenant and advocate. During the hearing affirmed testimony and documentary evidence were presented. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding (the "Notice of Hearing"), the application and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served personally on landlord agent BC ("agent") between 1:00 p.m. and 2:00 p.m. at the front desk and that the agent took the dispute resolution package from her. The advocate referred to the Shelter Information form, which was signed by a person named BC on behalf of the landlord. Therefore, based on the tenant's undisputed testimony and the documentary evidence before me, and without any evidence before me to prove to the contrary, I accept that landlord agent BC was served personally with the Notice of Hearing, application and documentary evidence on March 12, 2019. Therefore, I find that this application is undisputed by the landlord and the hearing continued without the landlord present.

Preliminary and Procedural Matter

The tenant and advocate confirmed their email addresses at the outset of the hearing. The tenant and advocate also confirmed their understanding that the decision would be emailed to them. As there was no email address for the landlord, the landlord will be sent the decision by regular mail.

Issues to be Decided

- Is the tenant entitled to the return of double their security deposit under the *Act*?
- Is the tenant is entitled to any other monetary compensation under the *Act*, and if so, in what amount?

Background and Evidence

The tenant confirmed that the landlord did not complete a written tenancy agreement. The tenant confirmed paying a security deposit of \$400.00 at the start of the tenancy, which is supported by the Shelter Information form submitted in evidence. The tenant testified that monthly rent was \$800.00 per month and due on the first day of each month. The tenant stated that the landlord has not returned the tenant's security deposit of \$400.00.

The tenant confirmed their reduced monetary claim during the hearing as:

| ITEM DESCRIPTION | AMOUNT CLAIMED |
|--|-------------------|
| 1. Loss of \$300.00 to stay in hotel due to bed bugs | \$300.00 |
| 2. Double security deposit of \$400.00 | \$800.00 |
| TOTAL | \$1,100.00 |

Regarding item 1, the tenant has claimed \$300.00 for the cost to stay in a hotel after discovering bed bugs in their rental unit. The tenant confirmed that she did not write to the landlord to complain of bed bugs and did not provide evidence that she provided a reasonable time for the landlord to address any issue related to bed bugs. As a result, the tenant was advised that this portion of her claim was being dismissed without leave to reapply during the hearing. I find the tenant failed to meet parts one, two and four of the test for damages or loss which I will described later in this decision.

Regarding item 2, the tenant has claimed \$800.00 for double the return of their security deposit pursuant to section 38 of the *Act*. The tenant referred to her written forwarding address submitted in evidence dated January 7, 2019, and testified that she personally served landlord agent BC at the front desk on January 7, 2019, which was witnessed by the tenant's daughter, DC, who is an adult. The tenant stated that the landlord has not returned any amount of her security deposit to date and has not served an application on the tenant filing a claim towards the security deposit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Item 1 – As mentioned above, the tenant has claimed \$300.00 for the cost to stay in a

hotel after discovering bed bugs in their rental unit. As the tenant confirmed that she did not write to the landlord to complain of bed bugs and did not provide evidence that she provided a reasonable time for the landlord to address any issue related to bed bugs, I find the tenant failed to meet parts one, two and four of the test for damages or loss. At the very least, I find that the tenant should have provided a written complaint to the landlord to support that the landlord was advised of an issue related to beg bugs. Secondly, I would expect the tenant to wait a reasonable period of time before vacating to allow the landlord to address a beg bug issue. As the tenant provided insufficient evidence of either, I dismiss this portion of the tenant's application without leave to reapply, due to insufficient evidence.

Item 2 – I accept the tenant's undisputed testimony that they personally served the landlord agent on January 7, 2019, with the tenant's written forwarding address. I have considered the written forwarding address and testimony in reaching this finding. I also accept the tenant's undisputed testimony that the landlord has not filed an application to claim against the security deposit and has not returned the security deposit to date. Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

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.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[Emphasis added]

In the matter before me, I find that the landlord breached section 38 of the *Act* by failing to return the security deposit in full to the tenant within 15 days of receiving the forwarding address of the tenant in writing on January 7, 2019. Therefore, as the landlord also failed to make a claim against the tenant's security deposit within 15 days of January 7, 2019, I find the tenant is entitled to the return of double the original security deposit of \$400.00 for a total of **\$800.00**. I note that the tenant's security deposit accrued \$0.00 in interest since the start of the tenancy.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **\$800.00**, comprised of a doubled \$400.00 security deposit as described above. I grant the tenant a monetary order pursuant to section 67 of the *Act* in the amount of \$800.00 accordingly.

I caution the landlord not to breach section 38 of the *Act* in the future.

Conclusion

The tenant's application is partly successful. The tenant has established a total monetary claim of \$800.00 as described above.

The tenant has been granted a monetary order under section 67 of the *Act* in the amount of \$800.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord has been cautioned as indicated above.

This decision will be emailed to the tenant and sent by regular mail to the landlord.

The monetary order will be emailed to the tenant for service on the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 28, 2019

Residential Tenancy Branch