



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BONIVENTURE APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MND, MNSD, MNDC, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover a portion of the cost of repairs to a garage gate and for the recovery of the filing fee.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony and to make submissions. The tenant represented himself and was accompanied by his son. The corporate landlord was represented by their agents. As both parties were in attendance I confirmed service of documents. The tenant confirmed receipt of the landlord's application and evidence. The tenant said that he had not submitted any evidence of his own. I find that the tenant was served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the landlord entitled to a monetary order to recover a portion of the cost to replace a garage gate and for the recovery of the filing fee?

Background and Evidence

The parties agreed that the tenancy started on June 01, 2017 and ended on March 01, 2019. The monthly rent was \$1,532.00. Prior to moving in the tenant paid a security deposit of \$737.50. The landlord received the tenant's forwarding address on April 05, 2019 and made this application in a timely manner on April 09, 2019.

The parties agreed that on October 28, 2018, the tenant accidentally drove into the garage as the gate was coming down. Since there was no safety mechanism in place to stop the descent of the gate when there is something in its path, the gate came down on the tenant's car causing damage to the gate.

The landlord filed a claim with ICBC and was awarded her entire claim to replace the garage gate with a 10% deduction for depreciation. The landlord stated that the gate was 35 years old except for the lower portion of the gate which was replaced approximately five years ago.

The landlord is claiming \$801.99 which represents the portion of her claim that was not paid by ICBC. The landlord is also claiming \$100.00 for the filing fee. The landlord is currently holding the security deposit of \$737.50 and has applied to retain it in partial satisfaction of her monetary claim.

Analysis

Section 40 of the *Residential Tenancy Policy Guideline* addresses the useful life of an item. I will use this guideline to assess the remainder of the useful life of the garage gate. As per this policy, the useful life a garage door and opener is ten years.

The landlord stated that the garage gate is 35 years old with a portion of the gate replace approximately five years ago. therefore I find that the garage gate had outlived its useful life even before the tenancy started. Accordingly, the landlord's claim for \$801.99 to cover the deduction made for depreciation is dismissed.

Since the landlord is not successful in her application she must bear the cost of filing her application. The landlord has not established a monetary claim and therefore must return the entire deposit to the tenant.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of the monetary claim. Because the landlord was unsuccessful in her claim it is appropriate that I order the return of the security deposit to the tenant.

Accordingly, I so order. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for \$737.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$737.50**.

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: July 13, 2019

Residential Tenancy Branch