



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT MNRT MNSD**

Introduction

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

- Authorization to recover the filing fees from the landlord pursuant to section 72;
- A monetary order for damages or compensation pursuant to section 67;
- A monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

The landlord did not attend this hearing although I left the teleconference hearing connection open until 2:05 p.m. to allow the landlord to call into this hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant, his witness and I were the only ones who had called into this teleconference.

The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified on March 21, 2019, he served the Notice of Dispute Resolution proceedings on the landlord by sending it by registered mail to the address provided by the landlord on the envelope in which his security deposit was mailed to him. A photo of the return envelope was provided as evidence. Also provided was a photo of the Notice of Dispute Resolution Proceedings package returned to the tenant indicating it was returned to him as undelivered. The tracking number for the registered mail is provided on the cover page of this decision. I find the landlord deemed served with the Notice of Dispute Resolution Proceedings on March 26, 2019 pursuant to sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to:

- Authorization to recover the filing fees from the landlord pursuant to section 72;
- A monetary order for damages or compensation pursuant to section 67;
- A monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

Background and Evidence

The landlord gave the following undisputed testimony. The month to month tenancy began on May 1, 2017. Rent in the amount of \$1,350.00 was paid on the first day of each month. A security deposit in the amount of \$650.00 was collected but was returned to the tenant at the end of the tenancy. When the tenancy ended, rent was \$1,352.00 per month. The tenant testified that heat was included in the rent. The rental unit was heated by propane heating with a large propane tank located on the property. No copy of the tenancy agreement was provided as evidence

The landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use on January 26, 2019. The Notice was posted to the tenant's door however he acknowledges receiving it on the same date. The effective (move-out) date noted on the 2 Month Notice is April 2, 2019. The reason stated for ending the tenancy is:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The name of the purchaser was provided on the Notice, according to the tenant. A copy of the 2 Month Notice was not provided as evidence in these proceedings.

The tenant testified that on March 3rd, he gave the landlord 10 days notice to end the tenancy after receiving the landlord's 2 Month Notice. He paid rent up to and including the end of February, however he did not pay rent for the month of March as he understood it was his right to withhold the last month's payment of rent. A copy of an undated, unsigned 10-day notice was provided as evidence by the tenant. On the 10-day notice, the tenant agrees to vacate the premises at 2:00 p.m. on March 17, 2019 and provides the landlord with his forwarding address. The tenant also

testified he verbally spoke to the landlord to arrange 1:00 p.m. on March 17th as a date and time for a condition inspection which the landlord did not attend. The tenant received his full security deposit back from the landlord on April 8, 2019 by regular mail. The envelope accompanying the cheque was postmarked April 8, 2019 and was provided as evidence by the tenant.

The tenant testified that on May 25, 2017 right after he first moved in, the propane tank to provide heat to the house was empty. He called the landlord to have her fix it multiple times, but the landlord was experiencing credit issues with the company who owned the propane tank on the property and they would not fill the empty propane tank. There was also a leak in the original propane tank lines at the second stage regulator. A second propane gas company was hired to remove the original propane tank, fix the leak, and cap the lines behind the stove. The tenant paid for this work, which also included paying the second gas company's yearly \$120.00 rental fee for another propane tank. In total the tenant paid the second gas company \$352.91 to have this "emergency" work done. The tenant testified he sought reimbursement for this invoice from the landlord, but she never paid him for it.

One year later, the tenant advised the landlord that the propane tank rental needed to be paid for once again. The landlord did not respond to his request and the tenant paid a different gas company \$110.00 for another tank rental.

Analysis

- Compensation pursuant to section 51

The tenant has given undisputed evidence that he was served with a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49 of the Act. Section 51(1) of the Act says 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.

Section 50 allows a tenant to end a tenancy by giving the landlord at least 10 days written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice. Pursuant to section 50(3), a notice under this section does not affect the tenant's right to compensation under section 51.

I am satisfied the tenant was served with a 2 Month Notice pursuant to section 49 and was not compensated with the equivalent of a full month's rent in accordance with section 51. The tenant testified he vacated the rental unit in accordance with his 10 day

notice to vacate on March 17, 2019 and did not receive compensation for the remainder of March, 2019. For the 14 remaining days in March, I award the tenant **\$610.58**.
calculated as: [$\$1352.00 / 31$ (days in March) $\times 14$ (days) = \$610.58]

- Tenant's claim for compensation for emergency repairs

Section 33 defines "emergency repairs" as 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.

Section 33(3) states a tenant may have emergency repairs made only when all of the following conditions are met:

- a) emergency repairs are needed;
- b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

The tenant has given undisputed testimony that heat was included in the tenancy agreement. The rental unit was primarily heated by propane and that the emergency repairs were made to leaks in the propane line and to cap the line behind the stove. He also testified that he asked the landlord to make the emergency repairs however the landlord was unable to pay for proper tank rentals due to damaged credit, forcing the tenant to pay for this himself. I accept the tenant's testimony that he provided copies of the invoices to the landlord and she did not pay them.

Section 33(5) states a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- a) claims reimbursement for those amounts from the landlord, and
- b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

I am satisfied that it was the landlord's responsibility to have the emergency repairs to the primary heating source for the rental unit, the propane tank, fixed and fully operational for the tenant. I find the cost of the repairs and the necessary propane tank rental paid for by the tenant to be reasonable in the circumstances. For the emergency repairs that the tenant had done without compensation from the landlord on May 25, 2017 I award the tenant **\$352.91**.

The tenant also seeks reimbursement for renting a propane tank the following year. The circumstances regarding this propane tank rental do not fall within the category of an emergency repair carried out by the tenant as defined in section 33 and I decline to award him for this invoice dated April 9, 2018.

- Tenant's claim for double security deposit

Section 38(1) of the *Act* states the landlord's responsibilities at the conclusion of a tenancy, reproduced below.

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,
 - a. 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.

If the landlord does not comply with section 38(1) of the *Act*, section 38(6) of the *Act* applies.

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.

I am satisfied the tenancy ended on March 17, 2019 and I accept the tenant's testimony that he gave the landlord notice of his forwarding address, contained on his 10 day notice to vacate on March 3, 2019. The tenant testified he received his full security deposit of \$650.00 in an envelope that was postmarked April 8, 2019 which is 22 days after the date the tenancy ends, and 36 days after the date the landlord received the tenant's forwarding address in writing.

Section 38(1)(b) requires that I double the security deposit in this circumstance. As the tenant has already received the original security deposit of \$650.00, I award him the doubled amount of \$650.00 only. The tenant is entitled to a monetary order in the amount of **\$650.00**.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Item	Amount
Compensation pursuant to sec. 51	\$610.58
Emergency repairs	\$352.91
Doubled security deposit	\$650.00
Filing fee	\$100.00
Total	\$1,713.49

Conclusion

I award the tenant a monetary order in the amount of \$1,713.49.

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 04, 2019

Residential Tenancy Branch