



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: FFT, MNDCT, MNSD, RPP

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$2388
- b. An order that the landlord return personal property.
- c. An order for the return of the tenant's security deposit.
- d. An order to recover the cost of the filing fee.

The Landlord failed to appear at the scheduled start of the hearing which was 1:30 a.m. on December 9, 2019. The Tenant was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the landlord to call in. The landlord failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The tenant was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

On the basis of the solemnly affirmed evidence presented at the hearing a decision has been reached. All of the evidence was carefully considered.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. It is deemed received 5 days after mailing. The Policy Guidelines provide that a party cannot avoid service by refusing to pick up their registered mail. I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served by mailing, by registered mail to where the landlord resides on August 26, 2019. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to an order for the return of personal property?
- c. Whether the tenant is entitled to an order for the return of his security deposit?
- d. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began in May 2015. The tenant subsequently moved to another unit in the rental property. The rent was \$700 per month. The tenant paid a security deposit of \$350. In October

2017 the landlord charged and received a rent increase of \$50 per month. The landlord did not give a Notice of Rent Increase in the form required by the Act.

The landlord demanded that the tenant vacate the rental property as she intended to use it for her son. A dispute arose between the parties. On or about March 11, 2018 the landlord and several family members on her behalf assaulted the tenant and stole his cell phone. The police were called. They recommended he should have a little contact with the landlord as possible. The tenant vacated the rental unit at the end of March 2018. The failed to take his microwave when he left.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit unless the tenant waives the doubling.

Analysis

The tenants paid a security deposit of \$350. I determined the tenancy ended on March 31, 2018. I further determined the tenants provided the landlord with his forwarding address in writing on that date. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. At the hearing the tenant waived his right to claim for the doubling of his security deposit. As a result I determined the tenant have established a claim against the landlord in the sum of \$350 for the return of the security deposit.

The Residential Tenancy Act provides that a landlord is not entitled to increase the rent unless the landlord complies with the Act which includes the requirement of providing the Tenant with a Notice of Rent Increase. The landlord demanded and received an extra \$50 rent increase for the period October 2017, November 2017, December 2017, January 2018, February 2018 and March 2018. The landlord failed to serve a Notice of Rent Increase as required by the Act. I determined the tenant is entitled to the \$50 rent increase per month for a total of \$300 for the period from October 2017 to and including March 2018.

I landlord failed to return the tenant's microwave. The tenant claimed \$175. However given its age he testified he estimated the depreciated value was \$100. I determined the Tenant is entitled to \$100 for this claim.

I determined the landlord or person under the landlord's control stole the tenant's cellphone. The cellphone was 6 months old. The replacement cost was \$1089. I accept the evidence of the tenant that the depreciated value was \$850. I determined the Tenant is entitled to \$850 for this claim.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1600 plus the sum of \$100 in respect of the filing fee for a total of \$1700.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent 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 final and binding on the parties.

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: December 09, 2019

Residential Tenancy Branch