



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR MNDCT MNRT PSF RR**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) pursuant to section 46;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to provide services or facilities as required by the tenancy agreement or the *Act* pursuant to section 62;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;

The tenant attended with his witness YZ who withdrew his name as a tenant. The proceedings were accordingly amended.

The tenant was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

Service

The tenant provided affirmed evidence supported by the witness YZ that the tenant served a copy of the Notice of Hearing and Application for Dispute Resolution upon the landlord by delivering a copy to the address provided by the landlord in the tenancy agreement, a copy of which was submitted. The tenant also submitted a copy of a Ten-Day Notice given by the landlord to the witness YZ in which the landlord provided this address as well.

Although not served in accordance with section 89 of the *Act*, I find the tenant's evidence credible, supported by the documentary evidence and supported by the witness' testimony. Accordingly, I find that the landlord was sufficiently served pursuant to section 71(2)(c) of the *Act*.

Withdrawal of claims

The tenant provided affirmed testimony that, as he had vacated the unit, he withdrew all claims except the claim under section 67.

Amendment to claim

The tenant requested authorization to add a request for reimbursement of the security deposit of \$100.00 which the tenant paid at the beginning of the tenancy. The tenant testified the landlord holds the security deposit and the tenant has not provided authority to the landlord to retain it.

Section 64(3)(c) and Rule 4 of the *Rules of Procedure* allow for an amendment of an application at the hearing. Rule 4 states the amendment may be allowed in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served.

Further to Rule 4, I find the landlord could reasonably have anticipated that the tenant

would claim return of the tenant's security deposit. I find the correction is not prejudicial to either party.

I accordingly allow the tenant to amend the application.

The tenant's application is therefore amended to allow for the tenant to apply for the return of the security deposit pursuant to section 38

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- An order for the landlord to return the security deposit pursuant to section 38;

Background and Evidence

The tenant provided uncontradicted affirmed testimony corroborated by the witness YZ in all respects. He testified he came to Canada to study at a university just before entering into the tenancy agreement.

The tenant entered into a 4-month tenancy agreement with the landlord beginning September 1, 2019 for monthly rent of \$790.00 payable on the first of the month. The parties entered into a signed tenancy agreement, a copy of which was submitted as evidence. The agreement stated, "first month's rent and last month's rent must be paid for this contract to take effect". As the tenant was new to British Columbia and unfamiliar with the *Act*, the tenant paid an extra month's rent to the landlord at the beginning of the tenancy, which was contrary to the *Act*.

Pursuant to the agreement, the tenant also paid a \$100.00 security deposit.

The tenant lived in the unit for September 2019. With the consent of the landlord, the tenant moved out at the end of September 2019 and a new occupant moved in to the unit who paid the landlord rent for October 2019. The tenant submitted texts with the landlord confirming this agreement.

When the tenant vacated, the landlord refused to return the tenant's rent overpayment of \$790.00 or the security deposit of \$100.00.

The tenant requested reimbursement of the \$790.00 overpayment at the beginning of the tenancy along with return of the security deposit.

The tenant submitted texts supporting his claims for many demands for reimbursement for the landlord to which the landlord countered that he would "sue" the tenant for harassment.

The tenant provided his forwarding address to the landlord by letter of November 5, 2019, a copy of which was submitted as evidence.

The tenant submitted copies of many texts exchanged with the landlord in support of his testimony.

An inspection was conducted on moving in; the tenant submitted a copy of a text on moving out requesting an inspection. The tenant testified that the landlord did not reply and no inspection on moving out was conducted.

Analysis

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

Damages

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

The claimant must prove the existence of the damage or loss. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.

Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

In this case, the onus is on the tenant to prove the tenant is entitled a claim for a monetary award.

I find the tenant has met the burden of proof on a balance of probabilities with respect to all the tenant's claims. The tenant was a credible, well-organized applicant and his testimony was support by documentary evidence and the testimony of the witness.

Reference to each of the claims follows.

Overpayment of Rent

The tenant claims reimbursement of \$790.00 paid by the tenant at the start of the tenancy agreement. I find the agreement to be in violation of the Act as it required the tenant to pay "first and last month's rent".

I accordingly grant the tenant a monetary award in the amount of \$790.00 being the overpayment of rent.

Security deposit

The tenant also requested return of the security deposit of \$100.00.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord must 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 tenants' written permission to keep all or a portion of the security deposit pursuant to Section 38(4)(a).

I find that at no time has the landlord brought an application for dispute resolution claiming against the security deposit for any damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the tenant's evidence they have not waived their right to obtain a payment pursuant to section 38 of the *Act*. I accept the tenant's evidence that the tenant gave the landlord written notice of their forwarding address.

In addition, the tenant testified that no condition inspection report was prepared at the end of the tenancy as required under sections 23 and 35 of the *Act*. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlord has extinguished any right to claim against the security deposit for damage to the rental unit by failing to prepare a condition inspection report at the end of the tenancy.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I find that the tenants are entitled to a monetary award of **\$200.00**. The tenants did not claim reimbursement of the filing fee.

Summary

The tenant is granted a monetary order as follows:

ITEM	AMOUNT
Rent overpayment contrary to Act	\$790.00
Security deposit - doubled	\$200.00
TOTAL Order	\$990.00

Conclusion

I grant the tenant a monetary order pursuant to section 38 in the amount of **\$990.00** as described above.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) to be 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: January 10, 2020

Residential Tenancy Branch