



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT MNSD

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to recover the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant gave evidence that they served the landlord with their application for dispute resolution and evidence by registered mail sent to the landlord's service address on October 11, 2019. The tenant provided a valid Canada Post tracking number and receipt as evidence of service. Based on the evidence I find that the landlord is deemed served with the tenant's materials on October 16, 2019 in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

- Is the tenant entitled to a monetary award as claimed?
- Is the tenant entitled to a return of the security deposit?
- Is the tenant entitled to recover the filing fee for their application?

Background and Evidence

This tenancy began in October 2016 and ended October 31, 2017. Monthly rent began at \$3,000.00 and was subsequently reduced by the parties to \$2,000.00. A security deposit of \$1,500.00 was paid at the start of the tenancy. The tenant testified that the landlord has returned \$843.28 of the deposit. The tenant submits that they consented to the landlord deducting \$591.72 but the landlord has deducted an additional \$65.00 to which the tenant has not agreed.

There was a previous hearing under the file number on the first page of this decision on July 4, 2017. As a result of the hearing a previous arbitrator issued the following order to the landlord:

- 1. To put the utility bills in his own name.**
- 2. To return post dated cheques for \$3000 to the tenants**
- 3. To repair the hole in the closet, the broken window, the steam room and the kitchen lights and to replace the blinds in the child's room.**
- 4. To have the roof gutters cleaned.**

The tenant submits that the landlord did not perform any of the ordered work during the duration of the tenancy. The tenant now claims a monetary award of \$4,180.00 for loss of quiet enjoyment of the rental property due to the landlord's failure to perform the ordered actions as well as other deficiencies during the tenancy.

The tenant gave evidence that in addition to the issues identified in the repair order above the landlord failed to fix a malfunctioning hood fan in the kitchen, did not perform lawn care throughout the course of the tenancy and that there was mold and mice spotted in the rental suite.

The tenant says that the condition of the suite had a detrimental effect on their ability to enjoy the rental property and seeks a monetary award for loss of quiet enjoyment. The tenant described the negative health effects they believe that members of their family suffered and that they were unable to use all of the amenities in their home due to the ongoing deficiencies.

Analysis

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 tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

In the present case, I accept the tenant's undisputed evidence that they provided a forwarding address to the landlord on October 31, 2017 when the tenancy ended. The landlord retained the amount of \$591.72 which was authorized but withheld an additional \$65.00 which the tenant did not give permission that the landlord may keep. I further find that the landlord has not applied for authorization to retain the additional \$65.00.

Accordingly, I find that the tenant is entitled to a monetary award of \$130.00, double the portion of the security deposit that the landlord has withheld without authorization.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant makes a claim for a monetary award for loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means a substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

I am satisfied with the tenant's testimony and documentary evidence that the landlord has engaged in a pattern of contravening the Act, regulations and tenancy agreement and ignoring orders of this Branch. I accept the tenant's testimony that the landlord failed to complete any of the repairs ordered in the earlier hearing. I find that the nature of the repairs ordered are more than merely cosmetic and include items such as broken windows and blinds in a child's room. I accept the tenant's evidence that the landlord's failure to make these repairs ordered had a detrimental effect on their ability to enjoy the rental suite.

I further find that in addition to their failure to abide by the orders of this Branch the landlord failed to maintain the rental unit in a reasonable condition allowing for infestation by mice, rotting fixtures and encroachment of mold. I accept the evidence that the landlord failed to perform work when requested by the tenant, failed to maintain the yard and garden in an acceptable state and generally failed to take the actions required of a reasonable landlord under the *Act*.

However, I find that there is insufficient evidence in support of the full amount of the monetary award sought by the tenant. The tenant has provided suggested monetary figures for the impact the deficiencies had on their ability to gain quiet enjoyment, but I find these figures are not supported in the evidence. The tenant gave little evidence that they would have used the yard had it been maintained nor did they provide a cogent explanation of how they arrived at the figures they suggest. I find that items such as spotting a mouse in the rental unit or dry rot in the fixtures have an intrinsic negative effect on the ability of an individual to derive enjoyment from rental property but I find little reasonable explanation for the figures suggested by the tenant.

Under the circumstances, based on the totality of the evidence I find that a \$2,400.00 monetary award for loss of quiet enjoyment is appropriate. The figure is approximately 10% of the monthly rent amount for the duration of the tenancy.

As the tenant was successful in their application they are entitled to recover their filing fee from the landlord.

Conclusion

I issue a monetary award in the tenant's favour in the amount of \$2,630.00 under the following terms:

Item	Amount
Return of Double Security Deposit Withheld as per section 38 of the Act (\$65.00 x 2 = \$130.00)	\$130.00
Loss of Quiet Enjoyment	\$2,400.00
Recovery of Filing Fee for this Application	\$100.00
Total Monetary Order	\$2,630.00

The tenant is provided with the Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 31, 2020

Residential Tenancy Branch