



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TCB Investments Corporation
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for the return of double the security deposit, for the cost of cleaning, for the filing fee and for other miscellaneous costs incurred. The tenant also applied for compensation for the loss of quiet enjoyment.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves. As both parties were in attendance, I confirmed service of documents. The landlord confirmed receipt of the tenant's evidence and stated that he did not file any of his own. I find that the landlord was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

The tenant provided extensive documentary evidence. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Is the tenant entitled to a monetary order?

Background and Evidence

The background facts are generally undisputed. The tenancy started on December 01, 2017 for a fixed term of one year. The monthly rent was \$1,700.00 payable on the first of each month. The tenant paid a security deposit of \$850.00. The tenant testified that the previous occupant had caused considerable damage to the rental unit and at the time of viewing the unit on November 16, 2017, the landlord agreed to have the repair work done by the start of tenancy on December 01, 2017. The tenant stated that the work was not complete at the start of tenancy.

A major part of the tenant's claim was for the inconvenience and dust caused by the work to repair the drywall. The landlord stated that the tenant had requested that a wall mirror be removed, and this also required additional drywall restoration. The tenant agreed that he had made this request.

The tenant stated that the tradesmen came to work inside the rental unit without providing prior notice. The landlord denied the allegation stating that proper notice was provided. The tenant agreed that the drywall was complete by December 16, 2017 but there were other areas that needed completion. The tenant stated that some of the baseboard was not reattached and that the cover plate of an electrical outlet was not installed, thereby exposing the wires. The tenant confirmed that he did not notify the landlord of the additional work that needed to be completed.

On December 13, 2017 the parties discussed ending the tenancy and, in an email, dated December 13, 2017, the landlord asked the tenant if he wanted to move out by December 31, 2017, as there was a prospective tenant available for January 01, 2018. The tenant agreed to move out. However, on December 14, 2017, the landlord informed the tenant that the prospective tenant was not available to move in on January 01, 2018.

The tenant stated that based on the communication by email he understood that the landlord had agreed to end the fixed term tenancy and therefore he moved out by December 31, 2017. The landlord stated that he offered the tenant a release from the fixed term tenancy agreement because he had a tenant for January 01, 2018. The landlord added that since the new tenancy did not materialize, he suffered a loss of income for January 2018. The landlord explained that he was content to keep the deposit in satisfaction of the loss even though it did not cover the entire loss.

On December 31, 2017, the tenant gave the landlord his forwarding address in writing with a request for the return of the deposit. The tenant followed this up with letters on May 28, 2018 and October 01, 2019 requesting the return of the deposit.

The tenant stated that his mattress and furniture upholstery were covered in drywall dust. The tenant added that due to the drywall dust, he incurred costs to have his personal items and the rental unit cleaned.

On December 27, 2019, 4 days prior to the end of the two-year statutory time frame, the tenant made this application. The tenant has applied for multiple remedies including compensation for the loss of quiet enjoyment and loss of privacy. The tenant has filed estimates, photographs and invoices to support his monetary claim.

The tenant has made a claim as follows:

1.	Return of double the deposit	\$1,700.00
2.	Cleaning of Mattress	\$167.99
3.	Vacuum upholstery	\$179.19
4.	Molly Maid	\$168.00
5.	Masks	\$16.31
6.	Drop sheets, painter's tape etc.	\$41.77
7.	Loss of space	\$280.50
8.	Disturbances due to work	\$100.00
9.	Substandard renovations and loss of privacy	\$510.00
10.	Filing fee	\$100.00
	Total	\$3,263.76

Analysis

The tenant filed proof of having sent the landlord 3 written requests for the return of his deposit which were dated December 31, 2017, May 28, 2018 and October 01, 2019. Upon review of these notes, I find that other than for the return of the deposit, the tenant did not request compensation for the remedies that he has applied for in this application. I also note that the tenant waited for almost two years to file this application.

1. Return of double the deposit - \$1,300.00

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the security deposit.

In this case the landlord agreed that he had received the tenant's forwarding address at the end of tenancy in December 2017. The landlord stated that he did not return the deposit because by moving out prior to the end of the fixed term, the tenant breached the agreement thereby causing the landlord to incur a loss of income for the month of January 2018 in the amount of \$1,700.00. The landlord decided that it was reasonable for him to retain the deposit of \$850.00 towards this loss.

I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address.

Therefore, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the deposit. The landlord currently holds \$850.00 for a deposit. Accordingly, the landlord must return \$1,700.00 to the tenant.

2. Cleaning of Mattress – \$167.99

The tenant provided an estimate to clean the mattress, which is dated December 03, 2019, almost two years after the tenancy ended. The tenant also testified that he had the mattress in his possession for one year and nine months before he disposed of it in September 2019. The tenant has not proven that he incurred a cost to clean the mattress and therefore his claim is dismissed.

3. Vacuum Upholstery - \$179.19

The tenant provided an estimate dated December 18, 2019. The tenant has not provided any proof of having incurred this expense and therefore his claim is dismissed.

4. Molly Maid - \$168.00

During the hearing the tenant agreed that he had not hired a professional cleaning service and had not incurred this expense. Accordingly, his claim is dismissed.

5. Masks - \$16.31

6. Drop sheets, painter's tape, etc. - \$41.77

The tenant testified that he purchased these items during the tenancy and filed copies of invoices to support his claim. The tenant added that these items were required due to the ongoing renovation work.

The tenant had the opportunity to ask the landlord to provide these items or to cover the cost of these items prior to purchasing them. The tenant chose to make the purchase and claim reimbursement almost two years later. The tenant also had the opportunity to inform the landlord during the tenancy, that he intended to make a claim for the cost of these items by filing for dispute resolution. The tenant failed to do so and served the landlord notice of this claim on December 31, 2019, a full two years later. Based on my findings, the tenant's claims for items #5 and #6 are dismissed.

7. Loss of space - \$280.50

8. Disturbances due to work - \$100.00

9. Substandard renovations and loss of privacy - \$510.00

The above 3 claims are all linked to the tenant's claim of loss of quiet enjoyment.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant must show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. Such interference might include intentionally removing or restricting services to the tenant.

Based on the testimony of both parties, I find that the landlord was attempting to repair the damage by the previous tenant and the tenant was fully aware of this at the time he moved in. The work was not completed in time. The tenant agreed that additional dry wall repair was required to accommodate his request to remove a mirror from the wall. The tenant agreed that the drywall repairs were complete by December 16, 2017 and that he did not notify the landlord of any additional work required. The tenant added that he did not request the landlord to complete items that the contractors failed to complete because he had already decided to move out.

I find that the tenant may have been inconvenienced while the repairs were ongoing, but temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

The landlord stated that he agreed to end the fixed term tenancy because the tenants were not happy with the rental unit and thereby suffered a loss of income. I also find that the landlord was notified of this claim on December 31, 2019 exactly two years to the day the tenancy ended which rendered the landlord out of time to make his own application to recover the loss of income he incurred.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Following from the tenant's failure to notify the landlord of his monetary claim in a timely fashion, or in each of his three communications to the landlord over a period of two years, pursuant to the doctrine of laches, I find that the tenant's application for compensation must hereby be dismissed.

Accordingly, I find that the tenant has not proven his case for compensation for the loss of quiet enjoyment and therefore items #7, #8 and #9 are dismissed.

10. Filing fee - \$100.00

The tenant has proven a portion of his claim and therefore I award the tenant the recovery of the filing fee.

The tenant has established the following claim:

1.	Return of double the deposit	\$1,700.00
2.	Cleaning of Mattress	\$0.00
3.	Vacuum upholstery	\$0.00
4.	Molly Maid	\$0.00
5.	Masks	\$0.00
6.	Drop sheets, painter's tape etc.	\$0.00
7.	Loss of space	\$0.00
8.	Disturbances due to work	\$0.00
9.	Substandard renovations and loss of privacy	\$0.00
10.	Filing fee	\$100.00
	Total	\$1,800.00

Overall the tenant has established a claim of \$1,800.00. ~~I order that the landlord retain the security deposit of \$850.00 in partial satisfaction of the claim and I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of \$950.00~~ the amount of \$1,800.00. 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 ~~\$950.00~~ \$1,800.00.

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: June 01, 2020

Residential Tenancy Branch