



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for the return of the security deposit of \$400.00; a monetary order for damage or compensation under the Act in the amount of \$5,000.00, and to recover the \$100.00 cost of her Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. Three witnesses, two for the Tenant, C.Y. and E.M., and one for the Landlord, K.S., were also present and provided affirmed testimony.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing. However, the Landlord confirmed that she had not submitted any documentary evidence to the RTB or the Tenant.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

#### Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

#### Background and Evidence

The Parties agreed that the periodic tenancy began on September 1, 2017, with a monthly rent of \$1,200.00, due on the 27<sup>th</sup> day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$600.00, and no pet damage deposit. They agreed that the Landlord returned \$200.00 of the Tenant's security deposit at the end of the tenancy.

The Parties agreed that the Tenant vacated the rental unit on January 30, 2018, and that she applied for RTB dispute resolution on January 29, 2020. The Tenant said she gave the Landlord her forwarding address in writing with her Notice to End the Tenancy in a letter to the Landlord dated December 26, 2017. The Landlord acknowledged receipt of this letter. I find that the Notice to End Tenancy and the forwarding address were provided to the Landlord on December 31, 2017, pursuant to section 90 of the Act.

#### *Return of Security Deposit*

The Parties agreed that the Landlord returned \$200.00 of the Tenant's security deposit on February 4, 2018, but retained the remaining \$400.00. In the hearing, the Parties commented on damage that may have been done to the rental unit during the tenancy; however, I explained that this proceeding is not about those damages, as the Landlord did not apply for RTB dispute resolution for compensation from the Tenant.

#### *Monetary Claim for Damages*

The Tenant said that her claim for a monetary order of \$5,000 is filed in accord with section 28 of Act for harassment and loss of quiet enjoyment. She said:

This is because of all the harassment I received from [the Landlord] over text

messaging, and from the incident on December 14, [2017], when [K.S. and her boyfriend, T.] came into our suite. At that time, [T.] said he was part of Hell's Angels and could remove us from the suite in 10 minutes or less. He made violent punching gestures, while talking to us. It was a very frightening and unpleasant experience that I wouldn't wish on anyone.

For other occasions, I've included a scan of the journal I kept during this time. I also typed it out for clarity. Anything in square brackets was not originally in the journal.

On another occasion on December 27, 2017, Judy came into the suite and demanded the rent. She always wanted it to be paid by email transaction, but it takes a bit longer. It's not as immediate as a cheque or cash. She yelled and insulted and shouted at me for half an hour, until she confirmed she had received the payment of rent.

The figure of \$5,000.00 is just the minimum fine for harassment or loss of quiet enjoyment for violence or intimidation. I wasn't too sure how to go about filing a monetary order for that or what the fine is for or where that money goes, so I'm not sure if I did that correctly. It might have said maximum in the Act.

The Landlord said:

For one, her harassment is of me, with texting her to get that money, because I was desperate because of our financial situation . [C.Y.] said quit harassing [the Tenant]. I was just asking please - it doesn't take eight hours to get an email transfer. It's usually half an hour.

I hadn't received the money, and I knew I was going to be in trouble, but that is just understandably so. There was no harassment. If she calls that harassment, I'd have to call [C.Y.] harassing me, because he was swearing at me, whatever.

The Parties continued to provide incidents in which one would be rude or aggressive with the other, and how each respective Party was negatively affected by the other's conduct.

This included statements by the Tenant's witness, C.Y., who said:

On December 14, 2017, a man named [T.] came down to threaten us. He was

very menacing - definitely the scariest thing I've ever experienced. They said we can evict you in 30 seconds. I believe [K.S.] was with him. I believe it was because they had thought we stole some Christmas decorations of theirs. Generally, I felt uneasy there; we were scared for our lives. We went to the police; it was very unpleasant.

The Landlord's daughter, K.S., said the following about the December 14, 2017 incident:

I was upstairs and I went down and talked to them first. [The Tenant] was very, very rude and interrupting and belittling. I was only 19; they were laughing at me and I came upstairs, and they saw how upset I was. [T.] said okay, I'll go talk to them and he's a respectful guy and fair and sees both sides of the picture. If you had people living in your house would you want to have all this back and forth? Every day there was something different that was wrong with them.

I wasn't with him. His voice was raised. . . . When we told him he was being accused of harassing them, he laughed and said 'that's insane'.

The Landlord also said the Tenant prevented her from using the shared laundry facilities, at times, for reasons the Landlord indicated she found to be weak. The Landlord said that her husband is a quadriplegic and that she may need to do laundry for him at any time, for proper hygiene purposes.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

#### *Return of Security Deposit*

I find that the Tenant provided her forwarding address to the Landlord on December 31, 2017, and that the tenancy ended on January 30, 2018. Section 38(1) of the Act states the following about the connection of these dates to a landlord's requirements surrounding the return of the security deposit:

**38** (1) 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,

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.

The Landlord was required to return the Tenant's \$600.00 security deposit within fifteen days of January 30, 2018, namely by February 14, 2018. If she did not return the full security deposit, the Landlord had to apply to the RTB for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Parties agreed that the Landlord returned only \$200.00 of the security deposit and did not apply for dispute resolution, claiming against the security deposit. Therefore, I find the Landlord failed to comply with her obligations under section 38(1).

Section 38(6)(b) states that if a landlord does not comply with section 38(1) that the landlord must pay the tenant double the amount of the security deposit. There is no interest payable on the security deposit.

As I found that the Landlord failed to comply with section 38(1) of the Act, I, therefore, award the Tenant with **\$800.00** from the Landlord in recovery of double the remaining security deposit, pursuant to sections 38 and 67 of the Act.

#### Monetary Claim for Damages

Section 28 of the Act sets out a tenant's right to quiet enjoyment of the rental unit, and states that tenants are entitled to "reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, subject only the landlord's right to enter the rental unit in accordance with section 29, and use of the common areas for reasonable and lawful purposes, free from significant interference."

Policy Guideline #6 ("PG #6"), clarifies a tenant's entitlement to quiet enjoyment of the property that is the covered by the tenancy agreement. PG #6 states:

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 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 entitlement to 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.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

### **Compensation for Damage or Loss**

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

[emphasis added]

I find from the evidence before me, overall, that the Parties had a difficult landlord/tenant relationship, with frustration and disrespect on both sides. The incident on December 14, 2017, is more a matter for the police to handle, depending on the credibility of each side. Given the limited amount of evidence provided on this matter, I

find it is beyond what is contemplated under section 28 of the Act and more a matter for the police.

I find that the Tenant provided insufficient evidence of a substantial interference with ordinary and lawful enjoyment of the premises over an extended period of time. Accordingly, I dismiss this claim without leave to reapply.

The Tenant was partially successful in her Application; however, I decline to award her with recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act.

### Conclusion

The Tenant's claim against the Landlord for return of the security deposit is successful in the amount of \$800.00. The Landlord did not return the Tenant's full security deposit or apply for dispute resolution within 15 days of the later of the end of the tenancy and the Landlord receiving the Tenant's forwarding address, contrary to section 38(1) of the Act.

I award the Tenant with double the amount of the remaining \$400.00 security deposit for a total Monetary Order of **\$800.00**, pursuant to sections 38 and 67 of the Act.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 9, 2020

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Residential Tenancy Branch