



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 claim of \$7,412.27 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the \$100.00 cost of her Application filing fee.

The Tenant appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on March 4, 2020. The Tenant provided Canada Post tracking numbers as evidence of service. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

I explained the hearing process to the Tenant and gave her an opportunity to ask questions about the hearing process. During the hearing the Tenant was given the opportunity to provide her evidence orally and to respond to my questions. 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.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in her Application. She confirmed these in the hearing, as well as confirming her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Tenant that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she 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 Tenant provided a copy of the tenancy agreement and confirmed that the periodic tenancy began on September 1, 2019, with a monthly rent of \$1,700.00, due on the first day of each month. The Tenant confirmed that she paid the Landlord a security deposit of \$850.00, and a pet damage deposit of \$850.00.

As background to her claim, the Tenant explained the following in the hearing:

I moved into the rental unit on September 1, 2019, and about two weeks in, my fob to the underground stopped working. I was approached by a Strata member who said 'you're not authorized to be here, which is why the fob was shut off.' I messaged the Landlord about this, and she said they're bullying her, so she's taking them to human rights . . . I said I'd help her, as long as she kept me in the loop, as I can't live in limbo. I checked back with her and she would say there was no news.

At the end of October, I was named by the Strata in some legal documents. . . just so they could communicate with me. It said I could leave within 90 days without being penalized, but they could come after me, thereafter. I have had no response from her since then. I messaged her, phoned the RTB, and they said the same thing; one person recommended a separation agreement. I sent it to

her, and said if you don't respond, I'll take it as acceptance. I looked for another place right away. I have a dog and it's hard to find housing as is, let alone on a whim.

The Tenant's claims are summarized in the following monetary order worksheet:

	Receipt/Estimate From	For	Amount
1	Canada Post	Registered mail (doc #20)	\$12.24
2	RTB	Application filing fee	\$100.00
3	Doc. #6	security deposit	\$1,700.00
4	Doc. # A4	Pet Damage deposit	\$1,700.00
5	Docs. 16 & A5	Moving costs	\$450.00
6	Doc. A3	Additional monthly rent due to move	\$900.00
7	Doc. A6	Free month's rent per 2 Month Notice	\$1,700.00
8	Doc. 1	½ month rent (L asked for Sep 1 move in)	\$850.00
		Total monetary order claim	\$7,412.27

1. REGISTERED MAIL → \$12.24

The Tenant's first claim is not something that is recoverable under the Act; therefore, I advised her that testimony was not necessary on this claim. This claim is dismissed without leave to reapply.

2. APPLICATION FILING FEE → \$100.00

In terms of this claim, I advised the Tenant that the arbitrator decides whether a party is eligible for reimbursement of this fee at the end of the analyses. Generally, if a party is successful with their claims, the arbitrator will award recovery of this fee. No testimony was needed on this claim.

3. DOUBLE THE SECURITY DEPOSIT → \$1,700.00

The Tenant said that the Landlord did not return the \$850.00 security deposit, therefore, she is not compliant with section 38(1) of the Act. The Tenant noted that section

38(6)(b) states that if the security deposit is not returned within 15 days of the later of the end of the tenancy and the receipt of the Tenant's forwarding address, that the Landlord is responsible for paying double the security deposit to the Tenant. The Tenant said that it is well past 15 days after the later event, which was the provision of the Tenant's forwarding address to the Landlord. The Tenant said she advised the Landlord of her forwarding address on January 24, 2020 via registered mail.

4. DOUBLE THE PET DAMAGE DEPOSIT → \$1,700.00

The Tenant said the Landlord failed to repay the \$850.00 pet damage deposit. The Tenant said the Landlord has the same obligations to now return double the pet damage deposit, as she does the security deposit, and pursuant to the same sections of the Act.

5. MOVING COSTS → \$450.00

In the hearing, the Tenant said that she makes this claim pursuant to section 145 of the *Strata Property Act*, which she submitted. Section 145 states:

Rental agreement in contravention of rental restriction bylaw

145 (1) If an agreement for the rental of a residential strata lot contravenes a bylaw that prohibits or limits rentals, the tenant

(a) is not in contravention of the bylaw, and

(b) may, within 90 days of learning of the landlord's contravention, end the tenancy agreement without penalty by giving notice to the landlord.

(2) If a tenant ends a tenancy agreement under subsection (1), the landlord must pay the tenant's reasonable moving expenses to a maximum of one month's rent.

The Tenant said that according to this statute, the Landlord must pay for her moving expenses. She said she: "...didn't hire someone to box up my things, and I hired movers at a reasonable rate."

6. ADDITIONAL MONTHLY RENT → \$900.00

In the hearing, the Tenant said that the only other place she could find to rent that allowed her dog was \$100.00 more expensive than the rental unit in question. The Tenant included a copy of her new tenancy agreement to show that she's now paying \$1,800.00 per month. The Tenant said she is claiming \$100.00 a month for each of the

nine months of her new lease.

7. FREE MONTH'S RENT FOR TWO MONTH NOTICE → \$1,700.00

The Tenant stated the following about this claim:

My understanding of standard proceeding would be she would have had to initiate my moving out. [The Landlord] would have to have claimed that she was moving back in the unit and given me a two months' notice, but she ignored the whole thing and made me do the work. She still should have followed through with what she needed to do. Instead of ignoring it.

8. HALF A MONTH'S RENT (Landlord asked for Sept 1 move-in) → \$850.00

The Tenant said that she wanted to move in on September 15, 2019; however, the Landlord wanted the tenancy to start on September 1, 2019. The Tenant said that she complied with this request; however, she "...had two units going for those two weeks." As such, she seeks reimbursement for the cost of that half month.

Analysis

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

Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

3. DOUBLE THE SECURITY DEPOSIT → \$1,700.00

I agree with the Tenant that the Landlord . . .

I find that the Tenant provided her forwarding address on January 24, 2020, via registered mail, which was deemed received by the Landlord five days later pursuant to section 90 of the Act; therefore, I find that the forwarding address was received by the Landlord on January 29, 2020. I also find that the tenancy ended on December 1, 2019.

Section 38(1) of the Act states the following about the relevance of these dates to 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 Landlords were required to return the \$850.00 security deposit within fifteen days after January 29, 2020, namely by February 13, 2020, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Landlord has provided no evidence that she returned any amount or applied to the RTB to claim against the deposit. Therefore, I find the Landlord(s) failed to comply with her obligations under section 38(1).

Section 39(6)(b) states:

38 (6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Since the Landlord failed to comply with the requirements of section 38(1), and pursuant to section 38(6)(b) of the Act, I find the Landlord must pay the Tenant double the amount of the security deposit. There is no interest payable on the security deposit. I award the Tenant with **\$1,700.00** for this claim.

4. DOUBLE THE PET DAMAGE DEPOSIT → \$1,700.00

The Tenant is correct that the Act treats the pet damage deposit in the same way as the

security deposit outlined above. Accordingly, and pursuant to section 38 of the Act, I award the Tenant with recovery of double the pet damage deposit for a total award of **\$1,700.00**.

5. MOVING COSTS → \$450.00

Section 145 of the *Strata Property Act* states that a tenant's eligibility to request the landlord to pay her moving expenses is based on establishing that the tenancy agreement contravenes a bylaw that prohibits or limits the rental of the unit. In addition, the tenant is required by subsection 145(1)(b) to end the tenancy without penalty by giving the landlord notice of the end of the tenancy within 90 days of learning of the Landlord's contravention.

In the case before me, the Tenant has explained that the Strata Council was in conflict with the Landlord. The Tenant did not direct me to a bylaw that prohibits the Landlord from renting out the unit; therefore, I find on a balance of probabilities that I do not have sufficient evidence before me to determine the merits of this claim.

Further, and more importantly, I find I do not have jurisdiction to make an order pursuant to the *Strata Property Act*, as my authority is derived from the *Residential Tenancy Act*. As a result, I dismiss this claim without leave to reapply.

6. ADDITIONAL MONTHLY RENT → \$900.00

Section 67 of the Act authorizes me to determine the amount of compensation one party must pay to another party as a result of not complying with the Act, regulation, or tenancy agreement. As a result of the Landlord's actions involving the Strata Council, it appears that she was not at liberty to rent out the rental unit for some unknown reason(s). The Tenant argued that but for the Landlord's actions, the Tenant would be living in that rental unit and paying \$1,700.00 a month in rent.

However, it could also be argued that the tenancy was frustrated before it began, in that the Landlord did not have the authority to enter into a tenancy agreement for this rental unit; therefore, the Landlord did not have the authority to rent out it out for this fee or otherwise.

I find that the Tenant has provided insufficient evidence of the Landlord's actions to indicate that the Landlord was responsible for the conflict between her and the Strata Council. As a result, I dismiss this claim without leave to reapply.

7. FREE MONTH'S RENT FOR TWO MONTH NOTICE → \$1,700.00

The Tenant based her claim on what she believes the Landlord should have done in this situation to end the tenancy. However, that is not what happened, and therefore, I do not have the authority under the Act to award compensation on a set of actions that "should have happened".

The Tenant said in her introductory remarks that on the advice of the RTB, she drafted a separation agreement or mutual agreement to end the tenancy, which she sent to the Landlord. The Tenant said she told the Landlord that if she does not reply, that the Tenant will take that as acceptance. As a result, I find that the Tenant ended the tenancy pursuant to the Act, rather than the Landlord ending it by serving the Tenant with a Two Month Notice to End Tenancy for Landlord's Use. Accordingly, I dismiss this claim without leave to reapply.

8. HALF A MONTH'S RENT (Landlord asked for Sep move-in) → \$850.00

I find that the Tenant agreed with the Landlord's request for a September 1, 2019 start to the tenancy, and she has not pointed out any way in which the Landlord violated the Act, regulation or tenancy agreement in this regard. I find it was inconvenient and expensive for the Tenant to start the tenancy on September 1, 2019; however, she was at liberty to not agree to this term. Without evidence of a breach or violation of the Act, regulation or tenancy agreement by the Landlord, I find that the Tenant has not proven her eligibility to compensation in this matter. As such, I dismiss this claim without leave to reapply.

Summary

	Receipt/Estimate From	For	Amount Awarded
1	Canada Post	Registered mail (doc #20)	\$0.00
2	RTB	Application filing fee	TBD
3	Doc. #6	security deposit	\$1,700.00
4	Doc # A4	Pet Damage deposit	\$1,700.00
5	Docs 16 & A5	Moving costs	\$0.00

6	Doc A3	Add'l monthly rent due to move	\$0.00
7	Doc A6	Free month's rent per 2 Mth Notice	\$0.00
8	Doc 1	½ month rent (L asked for Sep 1 move in)	\$0.00
		Total monetary order claim	\$3,400.00

Based on the evidence before me overall, I find that the Tenant is eligible for recovery of \$3,400.00 from the Landlord and I award the Tenant this amount, pursuant to section 67 of the Act. Given that the Tenant is partially successful in her Application, I also award her with recovery of the \$100.00 Application filing fee. I award the Tenant with a total monetary order of **\$3,500.00** from the Landlord.

Conclusion

The Tenant is successful in her claim for recovery of double the security and pet damage deposits in the total amount of \$3,400.00, as the Landlord breached section 38 of the Act. I also award the Tenant with recovery of her \$100.00 Application filing fee. The Tenant's other claims are dismissed, because the Tenant did not present sufficient evidence to establish the merits of those claims.

I grant the Tenant a Monetary Order from the Landlord under section 67 of the Act in the amount of **\$3,500.00**.

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 16, 2020

Residential Tenancy Branch