



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD, MNDCT, FFT**

Introduction

This hearing dealt with a tenant's application for return of double the security deposit and compensation for other damages or loss under the Act, regulations, or tenancy agreement.

The tenant appeared at the hearing; however, there was no appearance on part of the landlord despite leaving the teleconference call open for over 30 minutes.

Since the landlord did not appear, I explored service of hearing documents upon the landlord. The tenant submitted that he sent the proceeding package and evidence to the landlord via registered mail on October 31, 2020 to the landlord's service address and residence as provided on the tenancy agreement. The tenant provided a registered mail receipt, including tracking number, as proof of service. The tenant also sent an email to the landlord on November 9, 2020 to inform the landlord a registered mail package was waiting for pickup. The landlord did not pick up the registered mail package and it was returned to the tenant as unclaimed.

The tenant then re-sent the package to the landlord on November 27, 2020 via registered mail. The tenant provided a registered mail receipt, including tracking numbers, as proof of service. The landlord did not pick up this package either and it was returned to the tenant as unclaimed.

Searches of the registered mail tracking numbers showed that Canada Post left notice cards and the packages were not picked up or claimed by the recipient.

Section 90 of the Act deems a party to be in receipt of documents five days after mailing, even if the party refuses to accept or pick up their mail.

I am satisfied the tenant met his obligation to serve the landlord with his hearing materials in a manner that complies with section 89(1) of the Act and in keeping with section 90 of the Act, I find the landlord to be deemed served with the materials five days after the packages were sent to the landlord. Accordingly, I continued to hear from the tenant without the landlord present.

Issue(s) to be Decided

1. Is the tenant entitled to return of double the security deposit?
2. Has the tenant established an entitlement to compensation for other damages or loss under the Act, regulations or tenancy agreement, as claimed?
3. Award of the filing fee.

Background and Evidence

The parties executed a written tenancy agreement for a tenancy set to commence on April 1, 2020. The tenant paid a security deposit of \$800.00 and was required to pay rent of \$1600.00 on the first day of every month. The rental unit was described as being a ground floor suite and the landlord resided on the upper floor in a separate living unit.

The tenant gave the landlord notice to end the tenancy effective July 31, 2020. The tenant returned vacant possession of the rental unit to the landlord and participated in a move-out inspection with the landlord on August 1, 2020.

Below, I have summarized the tenant's claims against the landlord.

1. Double security deposit - \$1600.00

The tenant participated in a move-out inspection with the landlord on August 1, 2020 and wrote his forwarding address on the move-out inspection report. The tenant also gave the landlord a letter that contained his forwarding address. The tenant did not authorize the landlord to make any deductions from the security deposit and the landlord has not refunded the security deposit or filed an Application for Dispute Resolution to make a claim against the tenant's security deposit.

The tenant provided a copy of the tenancy agreement, condition inspection report, and the letter given to the landlord on August 1, 2020 in support of this claim.

2. Lack of sufficient heat - \$29.98

The tenant submitted that the rental unit was heated by a central furnace that heated both units; however, the thermostat was located in the landlord's unit. The tenant had to repeatedly request the landlord turn up the heat. The landlord would turn up the heat on some occasions but refused on other occasions and told the tenant to get more blankets if he was cold. The tenant purchased a space heater for \$29.98 and seeks recovery of this cost from the landlord.

The tenant provided a receipt for the purchase of a space heater and text messages exchanged between the parties concerning the tenant's request for more heat.

3. Termination of internet -- \$30.00 + \$128.55 + \$320.00

The tenancy agreement provides that internet is to be provided to the tenant by the landlord. The tenant submitted that the landlord terminated the tenant's ability to access the internet on July 6, 2020. The tenant looked into getting another internet service installed at the rental unit but the landlord would not authorize installation of another service and the landlord told the tenant to use his cell phone to get the internet. The tenant purchased two extra data packs for his cell phone provider at \$15.00 each but determined it was more cost effective to purchase another phone line with greater data included which he did at a cost of \$128.55. The tenant seeks recovery of the cost to purchase internet service through the cell phone providers.

In addition to the above costs, the tenant seeks compensation equivalent to 20% of the monthly rent for July 2020 due to the landlord's unlawful termination of a service the tenant was entitled to receive from the landlord.

The tenant provided copies of the text message exchanges with the landlord concerning the termination of the internet, a letter sent to the landlord putting the landlord on notice as to the breach of the internet, and invoices showing the costs the tenant incurred on July 8, 9 and 15, 2020 to acquire extra data.

4. Termination of dryer -- \$30.00 + \$160.00

The tenant submitted that he was to be provided free laundry as part of the tenancy agreement but the landlord turned off the power to the dryer on July 6, 2020. The landlord did not restore the dryer during the rest of the tenancy and the tenant had to go to a laundromat to dry clothes and it cost him \$30.00 in coins. In addition, going to the

laundromat cost the tenant time and expense to travel to and from the laundromat. Other times, the tenant had to hang to dry clothes which took longer and was inconvenient.

The tenant seeks to recover the cost incurred at the laundromat (\$30.00) plus compensation equivalent to 10% of the monthly rent due to the landlord's unlawful termination of the dryer and the inconvenience suffered by the tenant.

The tenant provided text messages exchanged between the parties concerning the termination of the dryer and the letter the tenant sent to the landlord to put the landlord on notice as to the landlord's breach of the tenancy agreement.

5. Mailing costs -- \$26.41

The tenant sent the landlord a letter on July 8, 2020 via registered mail to put the landlord on notice of the landlord's breach of the Act in terminating the internet and dryer services and on July 23, 2020 the tenant sent a registered letter to the landlord to give the landlord notice to end the tenancy due to breach of material terms of the tenancy agreement. The tenant seeks recovery of the registered mail costs.

The tenant provided copies of the letters dated July 8, 2020 and July 23, 2020 and receipts for registered mail.

6. Documentation preparation -- \$2000.00

The tenant sought the assistance of a friend or acquaintance to help him prepare letters sent to the landlord and to prepare evidence for this proceeding. The tenant put forth an invoice indicating he was charged \$2000.00 for these services and the tenant seeks compensation of \$2000.00.

The tenant provided a copy of an invoice in the amount of \$2000.00

7. Loss of quiet enjoyment -- \$500.00

The tenant submitted that in addition to the landlords termination of the internet and dryer services, the landlord sent him a letter dated July 12, 2020 that was abusive and demonstrated the landlord was watching the tenant, telling the tenant what to do and when to do it. The tenant submitted that the landlord's actions resulted in the tenant being stressed and unable to enjoy residing in the rental unit. The landlord's cumulative

actions resulted in the tenant bringing the tenancy to an end early which is what the landlord repeatedly told the tenant to do – move out.

The tenant provided a copy of the landlord's letter of July 12, 2020, several text messages exchanged between the parties and the tenant's letters to the landlord on July 8, 2020 and July 23, 2020.

8. filing fee -- \$100.00

The tenant seeks recovery of the filing fee paid for this Application for Dispute Resolution.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of all of the unopposed evidence before me, I provide the following findings and reasons.

Double security deposit

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

In this case, the tenant brought the tenancy to an end effective July 31, 2020 but vacated the rental unit and gave the landlord a forwarding address in writing on August

1, 2020 as seen on the move-out inspection report and the letter dated August 1, 2020. As such, I find the landlord had until August 16, 2020 to either: refund the security deposit to the tenant, get the tenant's written consent to retain it, or file a Landlord's Application for Dispute Resolution to make a claim against the tenant's deposit so as to comply with section 38(1) of the Act. The landlord did none of the things required of him to comply with section 38(1) and I find the landlord violated section 38(1) of the Act and must now pay the tenant double the security deposit in accordance with section 38(6) of the Act. Therefore, I grant the tenant's request for return of double the security deposit in the amount of \$1600.00.

Lack of heat

The tenancy agreement provides that the landlord was to provide heat as part of the rent. The tenant provided evidence that the tenant had to ask for the landlord to turn up the heat on April 1, 2020 and the landlord's responses was to deny the tenant's request and tell the tenant to get more blankets. Usually, tenants have the ability to adjust the heat in their rental unit; however, this rental unit was configured in such a way that the landlord had the control. While the upper unit may have been sufficiently warm to the landlord, it is not uncommon for the lower level to be cooler than the upper level and different people having different preferences for heat. I find the landlord's refusal to give the tenant more heat upon his request to be a breach of the tenancy agreement. I find the tenant's decision to purchase a portable heater on April 2, 2020 to be a reasonable and economical solution. Therefore, I grant the tenant's request to recover the cost of the heater, \$29.98, from the landlord.

Termination of internet

The tenancy agreement provides that internet was included in rent. The tenant provided evidence showing the landlord terminated the internet on July 6, 2020.

In order for a landlord to terminate a service or facility, the landlord must do so in accordance with section 27 of the Act, which requires the landlord to give the tenant one full month of advance written notice of the termination and a reduction in rent payable. The landlord did not terminate the internet in accordance with section 27 of the Act.

The tenant provided evidence that the tenant approached the landlord about acquiring another internet line to the house but the landlord instructed the tenant to get the data on his cell phone. The tenant provided evidence that he purchased extra data on his cell phone plan and another plan to acquire internet service July 8, 9 and 15, 2020. I

find the landlord's violation of the tenancy agreement and the Act caused the tenant to incur out of pocket expenses of \$30.00 and \$128.55 to purchase data on his cell phone(s) and I award the tenant recovery of those costs from the landlord.

The tenant also requested compensation equivalent to 20% of the monthly rent for loss of internet; however, I find that to grant the tenant's request would amount to double recovery. I therefore limit this request to the two days the tenant suffered loss of the internet before he purchased extra data (July 6 and 7, 2020). I calculate this to be $\$1600.00 \times 20\% \times 2/31$ days or \$20.65.

Termination of dryer

The tenancy agreement provides that rent includes free laundry. The addendum shows that the tenant was to be provided use of the laundry machines one day per week.

The tenant's text message exchanges with the landlord shows the landlord took issue with how much time the tenant was taking to do laundry and then the landlord terminated the power to the dryer on July 6, 2020.

As stated in the previous section, a landlord may not terminate a service or facility unless done so in accordance with section 27 of the Act. The landlord did not terminate the laundry service in accordance with section 27 of the Act and I accept the tenant's position that the termination left the tenant with out of pocket expenses to go to a laundromat as well as inconvenience and travel costs. Since July 6, 2020 is the first laundry day in the month and the tenant did not have the dryer for the rest of the tenancy, I accept that the tenant is entitled to loss of laundry for the entire month. Therefore, I grant the tenant's request for recovery of the \$30.00 spent at the laundromat and \$160.00 for his time and travel costs to go to the laundromat and inconvenience to wait for clothes to hang dry for the four laundry days lost from July 6, 2020 to the end of the tenancy.

Mailing costs and documentation preparation

Communicating with a landlord or tenant, in writing, is an ordinary occurrence in tenancies and the cost to prepare letters and mail them is not recoverable by a landlord or a tenant under the Act.

The cost to prepare documentation for a dispute resolution is not recoverable under the Act either except for the filing fee which I will consider later in this decision.

Therefore, I dismiss the tenant's request for recovery of mailing costs and the cost to prepare documentation.

Loss of quiet enjoyment

Under section 28 of the Act, every tenant is entitled to quiet enjoyment of the rental unit. Quiet enjoyment includes reasonable privacy; and, freedom from unreasonable disturbance or significant interference which would include harassment by the landlord.

Upon review of all of the communication the landlord sent to the tenant, including text messages and the letter of July 12, 2020, it is clear the landlord was closely monitoring the tenant's activities including use of the laundry, use of internet, use of electricity and the tenant's activities in the rental unit and complained of the tenant's activities. The landlord also repeatedly instructed the tenant to find a new place to live and move out. The landlord then began terminating services to be provided under the tenancy agreement. All things considered, I am of the view the landlord began a campaign to try to constructively evict the tenant and I accept the tenant's position that he was stressed by the landlord's actions and could not enjoy the rental unit as he was entitled to. I find the tenant's request for compensation of \$500.00 to be very reasonable considering the monthly rent was \$1600.00 and the majority of the month of July 2020 was likely unenjoyable given the landlord's actions. Therefore, I grant the tenant's request for loss of quiet enjoyment in the amount claimed of \$500.00.

Filing fee

The tenant's application had merit and I award the tenant recovery of the \$100.00 filing fee paid for this Application for Dispute Resolution.

Monetary Order

In keeping with all of my findings and awards above, I provide the tenant with a Monetary Order to serve and enforce upon the landlord, calculated as follows:

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|--|---------------|
| Double security deposit | \$1600.00 |
| Lack of sufficient heat | 29.98 |
| Termination of internet service (\$30.00 + \$128.55 + \$20.65) | 179.20 |
| Termination of dryer (\$30.00 + \$160.00) | 190.00 |
| Loss of quiet enjoyment | 500.00 |
| Filing fee | <u>100.00</u> |
| Monetary Order for tenant | \$2599.18 |

Conclusion

The tenant is awarded \$2599.18 against the landlord and is provided a Monetary Order in that amount to serve and enforce upon the landlord.

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: February 19, 2021

Residential Tenancy Branch