



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, OLC, MNDCT, RR, LRE, PSF, OT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order to restrict or suspend the landlord’s right of entry pursuant to section 70;
- An order requiring the landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 62(3);
- And order granting the tenant possession of the unit pursuant to section 54.

The tenant attended and had opportunity to provide affirmed testimony, present evidence and make submissions.

Preliminary Issue – Service

The tenant attended the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 17 minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

The tenant provided affirmed testimony that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on December 8, 2021 and deemed received by the landlord under section 90 of the *Act* five days later, that is, December 11, 2021.

The landlord submitted the mailing receipt as evidence which included the Canada Post Tracking Number.

Pursuant to the landlord's evidence and sections 89 and 90, I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution on December 11, 2021.

Amendment – Security Deposit

The tenant requested authorization to add a request for reimbursement of the security deposit of \$825.00 which the tenant paid at the beginning of the tenancy. The tenant testified the landlord holds the security deposit and the tenant has not provided authority to the landlord to retain it.

Section 64(3)(c) and Rule 4 of the *Rules of Procedure* allow for an amendment of an application at the hearing. Rule 4 states the amendment may be allowed in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served.

At the time the tenant brought the application, the tenant had not vacated the unit and the landlord held the deposit. Subsequently, the tenant has vacated the unit and the landlord's obligation to return the security deposit arose under the *Act*.

Further to Rule 4, I find the landlord could reasonably have anticipated that the tenant would claim return of the tenant's security deposit. I find the correction is not prejudicial to either party.

I accordingly allow the tenant to amend the application.

The tenant's application is therefore amended to allow for the tenant to apply for the return of the security deposit pursuant to section 38.

Preliminary Issue – Tenant Vacated Unit

The tenant testified they vacated the unit on December 15, 2021.

Accordingly, I dismiss the tenant's claims under sections 46, 62, 70, 62(3) and 54.

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order for the landlord to return the security deposit pursuant to section 38.

Background and Evidence

The tenant provided uncontradicted testimony as the landlord did not attend the hearing.

The tenant testified the parties entered into a written tenancy agreement which the tenant overlooked uploading as evidence. The tenant testified to the background of the tenancy as follows. The monthly tenancy began on August 1, 2021 and ended when the tenant vacated on December 15, 2021. The rent was \$1,650.00 monthly payable on the first of the month. The tenant paid a security deposit of \$825.00 which the landlord holds without the tenant's permission.

The tenant testified the unit is a residence. The tenant discovered that the furnace did not operate on September 15, 2021, the first cold night of fall. The tenant submitted copies of texts to and from the landlord asking for repairs. The landlord eventually replied that the cost of repairs was \$14,000.00 and the landlord refused to repair the furnace although they suggested the tenant pay half. The tenant declined. The furnace was not repaired during the tenancy.

The tenant testified that they moved out on December 15, 2021. This was as soon as they were able to find a place to live. In the meantime, the unit was extremely cold, and the tenant heated it inadequately with a space heater. The tenant said the unit was not fit to live in, but they had no choice but to stay until they found alternate accommodation. The tenant did not pay rent from September 15, 2021 to December 15, 2021.

The tenant stated she had not sent her forwarding address to the landlord. The forwarding address was provided by the tenant during the hearing and is on the first page of this Decision.

The tenant requested a return of the security deposit.

The landlord has not applied for compensation under the Act.

I informed the tenant of the provisions of section 38 of the *Act* which requires that the security deposit is doubled if the landlord does not return the security deposit to the tenant within 15 days of the later of the end of the tenancy or the provision of the tenant's forwarding address in writing.

No condition inspection report on moving in or moving out was submitted.

Analysis

Security deposit

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 the 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 pursuant to section 38(4)(a).

I find the tenancy ended when the tenant moved out on December 15, 2021. I find that at no time has the landlord brought an application for dispute resolution claiming against the deposit for any damage to the rental unit pursuant to section 38(1)(d) of the *Act*. I find the tenant provided a deposit of \$825.00.

I accept the tenant's uncontradicted evidence they have not waived their right to obtain a payment pursuant to section 38 of the *Act*.

I find the tenant did not serve the landlord with the forwarding address.

The tenant's forwarding address is on the first page of this Decision as provided by the tenant during the hearing. As this Decision will be sent to the landlord, I direct that the landlord is deemed to have received the forwarding address on the seventh day after the date of this Decision, that is, on March 29, 2021.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act* I award the tenant a Monetary Order of \$825.00. If the landlord does not return the security deposit within 15 days following March 29, 2021, the tenant shall be entitled to apply for a Monetary Order for double the security deposit pursuant to the *Act*.

I acknowledge and find the tenant did not have a working furnace from September 15 to December 15, 2021. As the tenant has not paid rent during this period., I find it unnecessary to determine whether the tenant is entitled to a return of rent or a monetary order for reimbursement of rent. I dismiss these claims with leave to reapply. The tenant is at liberty to raise these issues if the landlord brings an application for a Monetary Order.

Conclusion

I dismiss the tenant's claims under sections 46, 62, 70, 62(3) and 54 of the *Act* without leave to reapply.

I dismiss the tenant's claims under section 67 and 65 of the *Act* with leave to reapply.

I grant the tenant a Monetary Order of \$850.00 under section 38 of the Act for the return of the security deposit. This Monetary Order must be served on the landlord. The Order may be filed and enforced as an Order of the courts of the Province of BC.

I direct that the landlord is deemed to have received the tenant's forwarding address on the first page of this Decision on March 29, 2022; if the landlord does not return the security deposit within 15 days of that date, the tenant may apply for a doubling of the security deposit.

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: March 22, 2022

Residential Tenancy Branch