



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

On July 28, 2021, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for the return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

On August 12, 2021, this Application was set down for a Dispute Resolution participatory hearing to be heard on February 10, 2022 at 1:30 PM.

The Tenant attended the hearing, with R.S. attending as an advocate for the Tenant; however, the Landlord did not attend at any point during the 70-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. They acknowledged this term, and they provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord on or around August 12, 2021 by registered mail (the registered mail tracking number is noted on the first page of this Decision). She submitted a Canada Post receipt and tracking number as proof of service, and she noted that this package was returned to sender. Based on this undisputed evidence, I am satisfied that the Landlord was deemed to have received the Tenant’s Notice of Hearing and evidence package five days after it was mailed. As such, I have accepted the Tenant’s evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit?
- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started in the first week of October 2020 and that the tenancy ended on or around June 1, 2021 as the Landlord illegally changed the locks to the rental unit. Rent was established at an amount of \$1,100.00 per month and was due on the first day of each month. A security deposit in the amount of \$600.00 was also paid, which was more than the Landlord was permitted to accept pursuant to Section 19 of the *Act*.

She testified that she provided her forwarding address to the Landlord by posting it to the Landlord's door on June 11, 2021. She used the Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit form and it was signed by R.S., who confirmed that he witnessed this service. This document was submitted to corroborate provision of a forwarding address in writing, and service of that address. She stated that the Landlord has neither returned the security deposit nor made an Application to claim against it. Therefore, the Tenant is seeking double the deposit in the amount of **\$1,200.00** pursuant to Section 38 of the *Act*.

In addition, she advised that on or around April 6, 2021 until the day she left the rental unit, the Landlord engaged in aggressive, inappropriate, and bullying behaviour which resulted in a loss of quiet enjoyment for the Tenant. She stated that the Landlord would unlock the doors to the rental unit and would walk in while the Tenant was home. She submitted that the Landlord threatened and hurled obscenities at the Tenant, and also stole the Tenant's dog on one occasion. The Landlord eventually returned the dog, but called the police. When the police arrived, they talked to the Tenant and then went to talk to the Landlord. However, the Landlord did not answer the door until 30 minutes later, at which point she was violent and hurled obscenities at the police. She was also belligerent and mocked the police. Despite this behaviour, they did not arrest her, but attempted to calm her down. They eventually warned her about her behaviour, and they left.

She stated that the Landlord would intentionally park her truck in front of the Tenant's window, obscuring her view. She testified that within approximately 10 days of the above incident, the Landlord entered the rental unit with a bat and broke some of the Tenant's possessions. While she did not threaten the Tenant with the bat, the Landlord yelled at the Tenant to leave the rental unit. The Tenant called the police, which caused the Landlord to flee. The police attended the scene; however, the Landlord did not reappear. The police recommended that the Tenant find a new place to live, and they informed her of the option to press charges against the Landlord. However, she elected not to do so. She stated that the police acknowledged that they were aware of the Landlord's past behaviours.

Around the beginning of May 2021, the Tenant stayed in a hotel for a week for her safety. She returned to the rental unit to get dog food and the Landlord apologized for her behaviour. She claimed that she would be seeking help. When the Tenant returned to the rental unit, the Landlord had changed the locks, but provided the Tenant with a key. Approximately a week after this, the Landlord's questionable behaviours started again.

The Tenant testified that she decided to end her tenancy, so she hired movers; however, the Landlord locked the gate, preventing the movers from entering the property. She stated that the Landlord yelled and screamed at the movers to the point where the police were called again. When the police arrived, she lied to them. So, the police left but parked at the bottom of the hill to monitor the situation. Once they were gone, the Landlord began to yell and scream obscenities again. The police returned, they warned the Landlord about her behaviour, and they forced her to unlock the gate. This was on or around May 31 or June 1, 2021.

The Tenant claimed to have videos and pictures to support her allegations; however, she did not submit these as documentary evidence. R.S. confirmed that he had discussions with the Tenant about these incidents and stated that what she relayed during the hearing is similar to what she advised him of during her tenancy.

Due to her loss of quiet enjoyment and being forced to move, the Tenant advised that she is seeking compensation in the amounts of **\$300.00** for moving expenses, **\$250.00** for professional cleaners, **\$2,200.00** for April and May 2021 rent, **\$3,660.00** which was calculated as the difference of her new rent X 12 months, **\$1,280.00** for her time spent processing the Application, and **\$3,200.00** in emotional damages.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

When reviewing the undisputed evidence before me, I am satisfied that the Tenant provided her forwarding address in writing to the Landlord on June 11, 2021 by posting it to the Landlord's door. As such, the Landlord was deemed to have received the Tenant's forwarding address in writing on June 14, 2021.

I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address being provided or from when the tenancy ends, the Landlord must either return the deposit in full **or** make an Application to claim against the deposit. There is no provision in the *Act* which allows the Landlord to retain a portion of the deposit without the Tenant's written consent.

As the Landlord was deemed to have received the Tenant's forwarding address in writing on June 14, 2021, she had 15 days from that date to either return the security deposit in full or make an Application through the Residential Tenancy Branch to keep the security deposit. However, it appears as if the Landlord took no action.

Based on the totality of the evidence before me, as the Tenant did not provide written authorization for the Landlord to keep any amount of the security deposit, and as the Landlord did not return the security deposit in full or make an Application to keep this amount within 15 days of June 14, 2021, I find that the Landlord did not comply with the requirements of Section 38 and she illegally withheld the security deposit contrary to the *Act*. Therefore, the doubling provisions of this Section do apply in this instance.

Consequently, I am satisfied that the Tenant has substantiated a monetary award amounting to double the amount of the security deposit that was paid. Under these provisions, I grant the Tenant a monetary award in the amount of **\$1,200.00**.

With respect to the Tenant's claims for compensation, Section 28 of the *Act* outlines the Tenant's right to quiet enjoyment, and Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

When establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the

amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

To start, I dismiss the Tenant’s claims for compensation for moving expenses and cleaning as these are costs that the Tenant could have undertaken herself and would not necessarily have had to pay for. Furthermore, I dismiss her claims for compensation for her time spent processing this Application and for emotional damage as there are no provisions in the *Act* that would permit claims of this nature.

With respect to her other claims for a loss of quiet enjoyment of the rental unit, I find it important to note that the Tenant has submitted insufficient documentary evidence to support the Landlord’s alleged behaviours and actions. While it is entirely possible that these incidents occurred as described by the Tenant, it would not have been difficult to have submitted evidence that would have corroborated her claims. Statements from the police or the movers could have been easily obtained and submitted to support a conclusion that the Landlord had been behaving in an inappropriate and unacceptable manner. While R.S. did confirm the scenarios that were relayed to him through the Tenant, I do not find that this testimony lends much weight as it is simply a confirmation of what the Tenant advised him of. This does not necessarily support the Tenant’s claims as he did not witness any of these incidents. Consequently, I dismiss the Tenant’s claims for additional compensation without leave to reapply.

As the Tenant was partially successful in her claims, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 38 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Doubling of the security deposit	\$1,200.00
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$1,300.00

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$1,300.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 2, 2022

Residential Tenancy Branch