



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 the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of the tenant's security deposit of \$900.00, pursuant to section 38;
- a monetary order of \$900.00 for compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

"Landlord FMO" did not attend this hearing, which lasted approximately 94 minutes. Landlord ASML ("landlord"), the tenant, and the tenant's English language translator attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 1:30 p.m. with me, the landlord, and the tenant present. The tenant's translator called in at 1:40 p.m. This hearing ended at 3:04 p.m.

The landlord, the tenant, and the tenant's translator all confirmed their names and spelling. The landlord provided his email address, and the tenant provided his mailing address for me to send this decision to both parties after the hearing.

The landlord confirmed that he owns the rental unit. He provided the rental unit address. He stated that he had permission to represent landlord FMO, who he said is his wife, at this hearing (collectively "landlords").

The tenant confirmed that his translator, who he said is his sister, had permission to assist him and provide English language translation for him at this hearing.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recording of this hearing by any party. At the outset of this hearing, the landlord, the tenant, and the tenant’s translator all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. I informed both parties that I could not provide legal advice to them. Neither party made any adjournment or accommodation requests.

Both parties discussed settlement during this hearing but were unable to reach an agreement. Both parties affirmed that they were ready to proceed with this hearing and prepared to accept my decision, even if the decision was not in their favour. The tenant affirmed that he was prepared to accept my decision, even if he received \$0 and his application was dismissed without leave to reapply.

Both parties were repeatedly cautioned during this hearing about interrupting each other and myself. Both parties continued the above behaviour throughout this hearing, despite my warnings. However, I allowed both parties to attend this full hearing, which lasted 94 minutes and exceeded the 60-minute maximum hearing time, in order to allow them to present their evidence and submissions and to avoid an adjournment of this application.

The landlord confirmed receipt of the tenant’s application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that both landlords were duly served with the tenant’s application.

I informed the tenant that I did not receive his eight-page evidence package with his six-page tenancy agreement and two-page explanation, at the RTB. The tenant stated that he sent the evidence to the RTB when he first filed his application. Both parties agreed regarding the contents of the tenancy agreement at this hearing and the tenant had a full opportunity to explain his application and evidence at this hearing. For the above reasons, I informed the tenant that I did not require him to send a copy of his evidence to the RTB after this hearing.

The landlord stated that he submitted evidence for this hearing and for his own separate application on August 15, 2022. The tenant stated that he received the landlord's evidence on the day before this hearing, with the landlord's separate file number for his own application. I informed the landlord that I did not receive his evidence at the RTB. I notified him that I could not consider his evidence at this hearing or in my decision, because it was not received by the RTB or the tenant at least 7 days prior to this hearing date, contrary to Rule 3.15 of the RTB *Rules*.

Throughout this hearing, I repeatedly notified the landlord that his application for damages was a separate file, submitted on August 15, 2022 and currently being screened by the RTB. I repeatedly informed him that his application was not joined to be heard together with the tenant's application at this hearing, so I could not deal with it at this hearing. Throughout this hearing, the landlord repeatedly argued with me about the above information, insisting that his application should be dealt with at this hearing and that he submitted evidence for his own application that should be considered at this hearing. I informed him that I could not consider his evidence submitted for his own separate application, at this hearing.

The tenant stated that he was only seeking \$900.00, not \$1,800.00, plus the \$100.00 filing fee in this application. He claimed that he only wanted the return of his security deposit of \$900.00 because he thought that the landlord returned a half month's rent of \$900.00 for February 2022, to him. The tenant explained that if I found that his security deposit of \$900.00 was returned to him, he still wanted to recover \$900.00 for the half month rent reimbursement for February 2022.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation under the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to obtain a return of his security deposit?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the testimony of both parties at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 15, 2022 for a fixed term of one year. Both parties signed a written tenancy agreement. Monthly rent in the amount of \$1,800.00 was payable on the 15th day of each month. The tenant paid a security deposit of \$900.00 to the landlords. Move-in and move-out condition inspection reports were not completed for this tenancy. The landlords did not have written permission to retain any amount from the tenant's security deposit. The tenant did not provide a written forwarding address to the landlords. The tenants' current address is located on this application. The landlord's separate application, filed on August 15, 2022, does not seek to retain the tenant's security deposit.

The tenant testified regarding the following facts. He moved out of the rental unit on January 31, 2022 and return the keys to the landlord at that time. The landlord continues to retain his security deposit and has not returned it to him. The landlord only returned half a month's rent for February 2022 to the tenant on March 9, 2022. The landlord provided a handwritten note to the tenant, on the day prior to this hearing, on a bank statement, indicating that he was returning the tenant's deposit of \$900.00. He did not receive an e-transfer email from the landlord, indicating it was a deposit, when the \$900.00 was initially returned to him. He gave verbal notice, not written, to the landlord on January 20, 2022, to move out by February 15, 2022. The landlord verbally told the tenant, not in writing, that he would refund the tenant's half month's rent of \$900.00 for February 2022, if the tenant moved out by January 31, 2022. The tenant moved out because he used to live with his parents at the rental unit, but they went out of country to see his sister, and they have not returned. The rental unit is a three-bedroom unit, he only lives there with his wife, and the unit is too big for two people, so he could not afford the rent.

The landlord stated the following facts. He disputes the tenant's entire application. He sent an e-transfer of \$900.00 to the tenant, with an email indicating it was for the return of the security deposit. He did not receive any verbal or written notice from the tenant that he was moving out. He found out after the tenant left the rental unit, when the tenant returned to pick up his mail. The tenant did not return the keys for the rental unit to the landlord, so the landlord changed the locks. The landlord did not verbally agree to return \$900.00 to the tenant for half a month's rent for February 2022. The tenant moved out on February 7, 2022, and he signed a lease together with his parents, to live at the rental unit for a year.

Analysis

Burden of Proof

The tenant, as the applicant, has the burden of proof, on a balance of probabilities, to prove this application and monetary claims. The *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines require the tenant to provide evidence of this application, in order to obtain a monetary order.

The tenant served an application package to the landlord, as required. The tenant was provided with a four-page document entitled “Notice of Dispute Resolution Proceeding” (“NODRP”) from the RTB, which includes the phone number and access code to call into this hearing. The NODRP states the following at the top of page 2, in part (emphasis in original):

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP contains provisions that a legal, binding decision will be made in 30 days and that links to the RTB website and the *Rules* are provided in the same document.

The tenant received a detailed application package from the RTB, including the NODRP, with information about the hearing process, notice to provide evidence to support this application, and links to the RTB website. It is up to the tenant to be aware of the *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines. It is up

to the tenant, as the applicant, to provide sufficient evidence of his claims, since the tenant chose to file this application on his own accord.

Legislation, Policy Guidelines, and Rules

The following RTB *Rules* are applicable and state the following, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 16 states the following, in part (my emphasis added):

C. COMPENSATION

*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. **It is up to the party who is claiming compensation to provide evidence to establish***

that compensation is due. *In order to determine whether compensation is due, the arbitrator may determine whether:*

- *a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
- *loss or damage has resulted from this non-compliance;*
- **the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and**
- *the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

...

D. AMOUNT OF COMPENSATION

*In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. **A party seeking compensation should present compelling evidence of the value of the damage or loss in question.** For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.*

I find that the tenant did not properly present his application, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*.

This hearing lasted 94 minutes, so the tenant had ample opportunity to present this application and evidence. During this hearing, I repeatedly asked the tenant if he had any other information to present and provided him with multiple opportunities for same. The tenant did not explain his claims in sufficient detail during this hearing.

Findings

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application of \$1,800.00, without leave to reapply.

I find that the tenant failed the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

Rent Reimbursement

Both parties provided undisputed affirmed testimony at this hearing that they signed a written tenancy agreement for a fixed term tenancy from January 15, 2022, for a period of one year.

Subsection 45(2) of the Act sets out how a tenant may end a fixed term tenancy:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The above provision states that tenant cannot give notice to end the tenancy before the end of the fixed term.

Section 26 of the *Act* states that rent is due on the date in the tenancy agreement. Both parties provided affirmed, undisputed testimony at this hearing that rent was due on the 15th day of each month, as per the written tenancy agreement signed by both parties. Section 26 of the *Act* also states that rent is due, regardless of the landlords' actions or compliance with the *Act*. Section 26 of the *Act* further states that the tenant is required to pay full rent to the landlords, unless the tenant has a right to deduct rent, pursuant to the *Act*. The tenant does not have an order from an Arbitrator to deduct rent, nor has the tenant paid for emergency repairs, as per the procedure outlined in section 33 of the *Act*.

In this case, the tenant paid full rent of \$1,800.00 on January 15, 2022, as required by the written tenancy agreement. The tenant claimed he moved out on January 31, 2022, while the landlord said it was February 7, 2022. Regardless of when the tenant moved out of the rental unit, I find that the tenant owed a full month of rent to the landlords from January 15 to February 14, 2022, since rent is due on the 15th day of each month. Further, both parties agreed that the tenant occupied the rental unit from at least January 15 to 31, 2022. Regardless of whether the tenant provided notice on January 20, 2022, as claimed by the tenant, or after he moved out on February 7, 2022, as claimed by the landlord, this notice was not in writing as required by the *Act*, it was

verbal only, as agreed by both parties during this hearing. Further, the tenant did not provide 30 days written notice to move out of the rental unit and the tenant provided notice prior to the end of the fixed term of one year.

I find that the landlords did not make an agreement with the tenant to return half a month's rent of \$900.00 to the tenant for the period from February 1 to 14, 2022, as the landlord denied this, and the tenant did not provide any written proof of same, claiming it was verbal only.

Therefore, I find that the tenant is not entitled to the return of half a month's rent of \$900.00 for the period from February 1 to 14, 2022. This claim is dismissed without leave to reapply.

Security Deposit

Section 38 of the *Act* requires the landlords to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

This tenancy ended sometime between January 31 and February 7, 2022. The landlords did not have written permission to retain any amount from the tenant's security deposit. The landlords did not file an application to retain the tenant's security deposit at the RTB.

I find that the tenant is not entitled to the return of his security deposit of \$900.00 because the landlords already returned it to him. This claim is dismissed without leave to reapply. I find that the tenant received a written note, indicating that his deposit was being returned to him, from the landlords. Although the tenant claimed that he only received this note on the day before this hearing, I find that the landlords intended to return the tenant's deposit because the landlord disagreed that the tenant was entitled to a rent reimbursement for half of February 2022 rent, as per his testimony at this hearing. He said that the tenant moved out on February 7, 2022, and did not provide

proper notice to move out, so the tenant was not entitled to a rent reimbursement of any amount for February 2022.

I find that the tenant is not entitled to double the amount of his security deposit because he did not provide a written forwarding address to the landlords, as required by section 38 of the *Act*, and the tenant's application does not constitute a proper written forwarding address. I am required to consider the doubling provision, as per section 38 of the *Act* and Residential Tenancy Policy Guideline 17, even though the tenant did not apply for it, since he did not waive his right to it.

Filing Fee

As the tenant was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the landlords. This claim is dismissed without leave to reapply.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

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: August 22, 2022

Residential Tenancy Branch