



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to the tenant's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for the return of double the amount of the security deposit; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and if so for what amount?

Is the tenant entitled to the return of the security deposit as claimed?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a condominium in a multi-unit complex. Pursuant to a written agreement, the fixed term tenancy started on January 1st, 2012 and was to end December 31st, 2012. The rent is \$1000.00 per month and the tenant paid a security deposit of \$500.00.

The tenant testified that at the outset of the tenancy in late December 2011, she was denied a telephone land line hook up which left her unsafe. She stated that received no help from the landlord, particularly as she needed to provide the phone technician with a key to the telephone room in the complex. The tenant related an incident on January 5th, 2012, concerning a telephone conversation with the landlord during which she felt unwelcome and threatened because the landlord asked her if this is how she wanted to start her tenancy. The tenant said that her land line was installed on January 5th, 2012, but because of her dealings with the landlord she felt that she had no choice but to move out, which she did on January 13th, 2012.

The landlord testified that as landlord he does not have a key to the telephone room in question and that he does not provide service for tenants' phone hook ups. He stated that he made several calls to the strata representative, even on Christmas day, in order to assist the tenant. Concerning the January 5th, 2012 conversation with the tenant, the landlord did not dispute what he told the tenant, but rather argues that there no threat made or implied, and that he does not know how this incident could have made the tenant feel unsafe.

The landlord stated that the tenant abandoned the suite and received written notice on January 17th, 2012. He stated that the tenant did not follow the process as required under the Residential Tenancy Act, and that the tenant did not have grounds to abandon the unit, nor to hold the landlord responsible for moving and hotel expenses as claimed.

The landlord stated that he received the tenant's forwarding address in the January 17th, 2012 letter.

During the hearing, the landlord asked the tenant how she could have felt unsafe; the tenant replied that it was when he asked her if this is how she wanted to start the tenancy.

The tenant submitted a monetary claim as follows:

- Double the security deposit:	\$1000.00
- Best Western hotel stay:	\$ 221.74
- Ramada Inn stay:	\$ 271.41
- Moving expenses from storage:	\$ 700.00
- Moving expenses from unit:	\$ 635.00
- Total:	\$2828.15

Analysis

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing.

Section 38(6) of the Act provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

In this matter the landlord acknowledged receipt of the tenant's forwarding address in writing, but the security deposit was not returned and the landlord did not apply for dispute resolution as required by statute. Therefore the tenant is entitled to the return of double the amount of the security deposit.

Concerning the tenant's claim for hotel and moving expenses; the burden of proof was on the tenant to establish her claim. To do this, the tenant must provide sufficient evidence that the landlord violated the Act, regulation, or tenancy agreement; that the violation resulted in damage or loss to the tenant; and that the actual amount required as compensation for that loss is verifiable. Further, Section 7(2) of the *Act* states in part

that a tenant who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss.

After reviewing the tenant's documentary evidence and the parties' testimony, I find that the tenant has not proven that the landlord threatened her to a degree that justified her claim. The evidence supports that the parties' conversation on January the 5th, 2012 became heated due to frustrations; however, perceptions from one party does not necessarily constitute a breach of the Act by the other. A remedy for the tenant would have been to seek assistance through dispute resolution if the landlord failed to attend to her concerns in accordance with the Act or the tenancy agreement. I find insufficient evidence to show that the landlord is responsible for moving and hotel expenses and I dismiss this aspect of the tenant's claim.

Conclusion

The tenant established a claim of \$1000.00. Since the tenant was partially successful, I award the tenant \$25.00 as partial recovery of the filing fee. Pursuant to Section 67 of the Act, I grant the tenant a Monetary Order totalling \$1025.00.

This Order may be registered in the Small Claims 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: April 19, 2012.

Residential Tenancy Branch