



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, MNSD, OLC, ERP, RP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of double his security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33.

The landlords did not attend this hearing, although I waited until 9:58 a.m. in order to enable them to connect with this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The tenant testified that he sent the landlords a copy of his dispute resolution hearing package by registered mail on September 21, 2012. He provided the Canada Post Tracking Number to confirm this mailing. He testified that the package went to the address provided by the landlord on September 28, 2012, but has subsequently been returned to the tenant as unclaimed. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were deemed to have been served with the tenant's dispute resolution hearing package on September 26, 2012, the fifth day after its mailing.

During the hearing, the tenant testified that he vacated the rental unit on April 18, 2012, almost five months before he applied for dispute resolution. As such, the tenant agreed that he had mistakenly applied for cancellation of a landlord's notice to end tenancy which was never issued to the tenant. The tenant withdrew this element of his application as well as his applications for the issuance of an order against the landlord

to comply with the *Act* and to obtain repairs to the rental unit. All of these portions of the tenant's application are withdrawn.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of his security deposit? Is the tenant entitled to a monetary award equivalent to the amount of his security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to any other monetary award for the loss in value of his tenancy?

Background and Evidence

The tenant testified that he moved into the rental unit on March 1, 2012 on the basis of a periodic (month-to-month) tenancy. He testified that the monthly rent of \$550.00 was reduced to \$500.00 by the landlord because of concerns that the tenant raised about the security of the rental unit due to improper locking mechanisms for his rental unit. The tenant testified that the landlord agreed to reduce his rent to \$500.00 and committed to provide him with supplies and materials to enable the tenant to repair various items in the rental unit, and in particular, to improve the security of the rental unit. The tenant submitted the final 5 pages of what appears to be a standard Residential Tenancy Agreement (the Agreement) for a periodic tenancy commencing on April 1, 2012. This Agreement was signed on March 30, 2012 by the tenant, the landlord and the landlord's building manager KS (the building manager). Monthly rent in this Agreement was set at \$500.00, payable in advance on the first of each month. Although the Agreement entered into written evidence by the tenant noted that a \$250.00 security deposit was required to be paid by April 1, 2012, the tenant testified that he paid the security deposit by March 1, 2012.

The tenant's application for a monetary award of \$2,625.00 included the following:

Item	Amount
Return of Security Deposit	\$250.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i> by returning the Security Deposit	250.00
Recovery of All Rent Paid During his Tenancy	1,000.00
Damage to Health	1,000.00
Total of Above Items	\$2,500.00

The tenant testified that he gave his written notice to end this tenancy to the building manager between April 15 and 18, 2012. He testified that he vacated the rental unit on

April 18, 2012, as he could not continue living in the rental unit under the existing conditions. He said that he paid \$500.00 in rent for both March and April 2012.

The tenant testified that he provided the building manager with his forwarding address in writing on April 18, 2012. He read from a document that he believed he had submitted into written evidence in which he provided his forwarding address to the landlord. The Residential Tenancy Branch (RTB) has no record of receiving the written evidence referred to in the tenant's oral testimony. The tenant could not recall when or if he provided this forwarding address to the landlord directly.

At the hearing, the tenant described the expenses that he incurred and losses he encountered when he had to leave the rental unit on short notice. He said that his claim was intended to cover his loss of possessions that he had to leave behind and his moving costs when he ended this tenancy. He did not provide receipts to support this aspect of his claim. The tenant did not provide written evidence from a health care professional to support his claim for damage to his health arising from this tenancy.

Analysis – Security Deposit

Section 38(1) of the *Act* requires a 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 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 return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, the tenant has not supplied sufficient evidence to confirm that he provided his forwarding address in writing to the landlord. One of the documents he entered into written evidence was apparently a March 6, 2012 letter in which the tenant had scratched out that date and substituted it with September 11, 2012. The first page of this letter was signed by the tenant and the final statement was "and damage dep be returned at end of March or April." The second and third pages of this letter appear to have been added to the original March 6, 2012 letter, perhaps on September 11, 2012, in preparation for the tenant's September 11, 2012 application for dispute resolution. On the third page of this "extension" of his original letter, the tenant has added a

forwarding address in Prince George which does not coincide with the mailing address identified by the tenant in his September 11, 2012 application nor his current mailing address provided at this hearing.

In addition to the above inconsistencies and the tenant's failure to include proof that he provided his forwarding address to the landlord's representative in April 2012, the tenant has not provided a complete copy of the Agreement. The first page of the Agreement would identify very important information including the address for the rental unit as well as names and addresses of the parties for the service of documents relating to this tenancy.

I accept the tenant's undisputed evidence that a tenancy existed between the parties. Under these circumstances, I find that the tenant is entitled to obtain a return of his security deposit. No interest is payable over this period. I dismiss the tenant's application to obtain a monetary award equivalent to the amount of his security deposit because the tenant has not demonstrated that he has provided the landlords with his forwarding address in writing. I do so as I find that the landlord's obligation to return the tenant's security deposit has not yet been triggered.

Analysis – Monetary Award for Losses

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In addition to section 67 of the *Act*, I have also taken into account the following provisions of sections 28 and 32 of the *Act* which I also find relevant to the tenant's application for a monetary award for the loss in value of his tenancy:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance

with section 29 [landlord's right to enter rental unit restricted];

(d) use of common areas for reasonable and lawful purposes, free from significant interference...

32 *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant....

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

In considering the tenant's claim for the loss in value of his tenancy, I first note that by his own admission the landlord did reduce his monthly rent by \$50.00 for each of the two months of this tenancy. I find the tenant's written evidence and sworn testimony somewhat confusing to follow. I also take into account that the tenant did inspect the rental unit prior to entering into this tenancy and realized that the rental unit was deficient in a number of ways. Despite these weaknesses in the tenant's application for a monetary award, it does appear to me that there is some basis to his claim that the landlord did not follow through on commitments made to the tenant to provide him with a safe and secure rental unit. For this reason and based on the tenant's undisputed evidence, I find that the tenant is entitled to a monetary award of an additional \$100.00 for each of the two month duration of this tenancy.

I dismiss the remainder of the tenant's application for a monetary award as I find that the tenant has failed to provide sufficient evidence, either written or oral, of any actual loss which would support any further monetary award arising out of this tenancy.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms which allows the tenant to obtain his security deposit and to recover the loss in value of his tenancy:

Item	Amount
Return of Security Deposit	\$250.00
Monetary Award for Loss in Value of the Applicant's Tenancy (\$100.00 x 2 months = \$200.00)	200.00
Total of Monetary Order	\$450.00

The tenant is provided with these Orders in the above terms and the landlord(s) must be served with a copy of these Orders as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the tenant's application for a monetary award for all other losses arising out of this tenancy without leave to reapply. The tenant's application to cancel a notice to end tenancy and for a range of other orders is withdrawn.

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: October 24, 2012

Residential Tenancy Branch