



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 689352 BC LTD
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

On November 4, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act"). The Tenant applied for a monetary order for money owed or compensation for damage or loss, for the return of their security deposit, and to recover the filing fee. The matter was set for a conference call.

The Tenant attended the conference call hearing and was affirmed to be truthful in their testimony. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that the Application for Dispute Resolution and Notice of Hearing documents had been served on the Landlord, by Canada Post Registered mail, sent on November 7, 2019, a Canada post tracking number was provided as evidence of service. The Tenant also testified that he personally served the Landlord with a copy of the Application for Dispute Resolution and Notice of Hearing Documents on November 23, 2019. I find that the Landlord had been duly served in accordance with sections 89 and 90 of the *Act*.

The Tenant was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Is the Tenant entitled to the return of their security deposit?
- Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*?
- Is the Tenant entitled to recover the filing fee for this application?

Background and Evidence

The Tenant testified that this tenancy began on October 1, 2019, as a month to month tenancy. Rent in the amount of \$1,675.00 was to be paid by the first day of each month, and that the Tenant paid the Landlord a \$837.50 security deposit. The Tenant also testified that the tenancy ended on September 30, 2019, the dated the Tenant moved out of the rental unit. The Tenant testified that the forwarding address for this tenancy was provided to the Landlord on August 19, 2019, when the Tenant served their notice to end tenancy on the Landlord.

The Tenant testified that as of the date of this hearing they had not be notified of an Application for Dispute Resolution claiming against the deposit, by the Landlord. The Tenant is seeking the return of the security deposit for this tenancy.

The Tenant is also seeking \$1,675.00, the equivalent of one months rent as compensation for loss of quiet enjoyment and comfort during his tenancy, due to the harassment he received for the Landlord during the tenancy

The Tenant testified that in mid-November 2018, while speaking to other residences in the building, he had been advised that “he had made a mistake moving in” as the Landlord had a history of not following the *Act* and giving the tenants a hard time.

The Tenant testified that he received the first text message complaint from the Landlord on November 13, 2018, stating that he was parking in the wrong spot and that he had to move. The Tenant testified that he was not even home at the time of the text and could not have been parking in the incorrect spot.

The Tenant testified that the Landlord had agreed to have the front door repaired during the move-in inspection, and that agreement had been recorded on the move-in inspection report. However, it had taken the landlord about 5 months to have the front

door repaired. The Tenant testified that during that 5-month time period the Landlord had repeatedly refused to fix the door and told the Tenant to do the repairs themselves.

The Tenant testified that on January 9, 2019, the Landlord threatened to evict the Tenant when the Tenant moved some plants in the hallway. The Tenant testified that the plants were moved so they were not damaged when the Tenant carried large bags down the hall.

The Tenant testified that between April 3, 2019 to April 10, 2019 the heat to the rental unit had been turned off, and that the Tenant had to contact the Residential tenancy Branch to get assistance having the heat turned back on.

The Tenant testified that on January 31, 2019, the Landlord sent a text, ordering the Tenant to clean a trail of dirt leading to the Tenants doorway, or that the Tenant would be charged for cleaning.

The Tenant testified that the Landlord threatened eviction on April 24, 2019, when the Tenant allowed a friend and their child to use the shower in the rental unit.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I accept the undisputed testimony of the Tenant, and find that this tenancy ended on September 30, 2019, the date the Tenant moved out of the rental unit, and that the Tenant provided their forwarding address to the Landlord on August 19, 2019. Accordingly, the Landlord had until October 15, 2019, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposits. The Landlord, in this case, did neither.

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree, in writing, to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit, based on unproven claims.

I find that the Landlord breached section 38 (1) of the *Act* by not returning the Tenant's deposits or filing a claim against the deposits within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

- 38 (6)** If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenant has successfully proven that they are entitled to the return of double the Tenant's deposits. I find for the

Tenant, in the amount of \$1,675.00, granting a monetary order for the return of double the security deposit and pet damage deposit.

As for the Tenant has claimed for \$1,675.00 in compensation from the Landlord, for the loss of comfort and quiet enjoyment during the tenancy. Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“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. 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.

In determining if the requested compensation is due, I must first determine if the Landlord breached the *Act* during this tenancy. I have carefully reviewed the testimony and documentary evidence provided by the Tenant, and I find that there is insufficient evidence to satisfy me that the Landlord had breached the *Act* during this tenancy. In the absence of sufficient evidence, to prove a breach of the *Act*, I must dismiss the Tenant’s claim for compensation for loss of quiet enjoyment.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been partially successful in this application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I find that the Landlord breached section 38 of the *Act* when they failed to repay or make a claim against the security deposit and pet damage deposit as required by the *Act*.

I find for the Tenant pursuant to sections 38 and 72 of the *Act*. I grant the Tenant a **Monetary Order** in the amount of **\$1,775.00**. The Tenant is provided with this Order 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.

I dismiss the Tenant's application for compensation due to loss of quiet enjoyment.

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 20, 2020

Residential Tenancy Branch