



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNSD, FFT**

Introduction

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

1. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
2. An Order for the return of the security deposit that the Landlord is holding without cause pursuant to Section 38 of Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on May 1, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package. I find that the

Landlord was deemed served with the NoDRP package five days after mailing them, on May 6, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord served the Tenant with his evidence by Canada Post registered mail on December 1, 2022. The Landlord referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant confirmed receipt of the Landlord's evidence. I find that the Landlord's evidence package was deemed served on the Tenant on December 6, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to an Order for compensation for a monetary loss or other money owed?
2. Is the Tenant entitled to an Order for the return of the security deposit that the Landlord is holding without cause?
3. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord confirmed that this periodic tenancy began on September 15, 2021, while the Tenant stated the tenancy began on September 17, 2021. Monthly rent was \$2,000.00 payable on the first day of each month. A security deposit of \$1,000.00 was collected at the start of the tenancy and is still held by the Landlord.

The Tenant claimed the fridge was not functioning optimally for the first seven weeks of the tenancy. She stated there were three different times that the Landlord attempted to reset it in September 2021. The fridge continued to blow hot air, and the Tenant maintained that she did not jam the freezer full. It was not until October 15, 2021 the Tenant stated, that the Landlord put the Tenant's fridge items in a cooler which, she said, he only filled with ice once; later the Tenant said the Landlord put her items in his freezer during the period between October 15 to November 6, 2021. After this time, the Landlord bought a new fridge.

The Landlord said there is a thermostat in the chest part of the fridge which indicated that it was getting warm. The Landlord stated that the fridge malfunctioned twice starting around October 15, 2021. The Landlord said the fridge will not work properly if it is jammed full, the air does not circulate. The Landlord took the old fridge downstairs to his unit, and the Landlord installed a new fridge into the rental unit on November 5, 2021. He denies the Tenant was without an operating fridge for 7 weeks.

The Tenant seeks compensation for the following items as copied from her monetary order worksheet:

ITEM	AMOUNT
Air filter - Cdn. Tire receipt	\$68.88
Heat gun - Cdn. Tire receipt	\$30.19
Groceries	\$260.00
Vet receipt	\$137.02
Cargo Chain movers	\$250.00
Air Canada-brother's flight ticket	\$435.88
U-Haul	\$851.20
TOTAL MONETARY AWARD:	\$2,033.17

The Tenant's and Landlord's evidence about the above items follow:

Air filter

The Tenant said the Landlord was doing woodwork construction in the house, and the Tenant needed the air filter to clear the dust in the air which was making the Tenant's dog sick.

The Landlord testified that he was using a little hobby saw in the back room of what used to be a carport. The amount of sawing was so minimal. There was no dust that came from that. The Landlord pointed out that the Tenant disclosed that her dogs shed so much that she needed to vacuum before she cooked or baked.

Heat gun

The Tenant claimed she needed this tool to prove to the Landlord that the fridge was not working. The Tenant stated her milk would go bad after a few days. The heat gun

detects hot and cold temperatures. The Tenant said the previous tenant had similar problems with the fridge.

The Landlord stated there is a thermometer in the fridge and this heat gun was not necessary. Anyone can see the LED display in the fridge which tells the temperature, and it was obvious that it was malfunctioning.

Groceries

After several weeks with the fridge not functioning properly, the Tenant had to replace groceries that went bad because of the warm temperature in the fridge.

The Landlord said it seemed like an awful lot of groceries, and anyways, the Tenant would not listen to reason about jam packing the fridge. The manufacturer's instructions explain how to use the fridge. After moving the fridge downstairs, the Landlord maintained that he never had any malfunctions with the fridge.

Vet receipt

The Tenant said her dog's eyes got an infection from the dust in the air in the rental unit, and she needed to get saline drops, and "other stuff" to treat her eyes.

The Landlord stated that the Tenant used a Roomba (a robot vacuum), which is a small vacuum cleaner. He stated with two dogs in the Tenant's rental unit, he does not believe that this small vacuum cleaner can keep up with a normal amount of dust. The Landlord repeated that the Tenant told him her floor was covered with dog hair and she could not cook or bake until she vacuumed with it. The Landlord said it is not his responsibility if she does not keep her floor clean.

Movers

The Tenant said she did not feel safe living in the rental unit, and because of how the Tenant felt she needed to move urgently, she had to hire movers to help her load the U-Haul.

The Landlord said he has never had a Landlord pay for his movers.

Air Canada Ticket

The Tenant flew her brother out to help drive the U-Haul. She thought having a male there would be helpful.

The Landlord said he has never had a Landlord pay to fly people out to help with his moves. The Landlord thinks it is unreasonable that he should be responsible to pay for her brother to be flown out to help with her move.

U-Haul

The Tenant claimed this expense of moving her belongings out of the rental unit.

The Landlord said he is not responsible to pay for her move, she is responsible for her own actions.

The Landlord said all the trouble began because of the racket made by the dogs. The Landlord believes the Tenant was throwing a deer antler in the living room, and the dogs were running down the hallway and smashing into the living room furniture. The Landlord saw the Tenant using this deer antler in the backyard, which was fine, but in the house and above his living space, the Landlord said, "*the dogs were abusively noisy.*"

The Landlord sent a text message to the Tenant on January 7, 2022 asking the Tenant to stop her dogs from racing and barking above him. The Tenant responded by saying, "*ok, I'll start looking for new rentals tomorrow.*" The Landlord said he did raise the volume on his tv so he could hear it, this happened twice, and it was not late at night.

The Landlord testified that the tenancy ended around January 30, 2022, although he thinks the Tenant left a few days before that date. The Landlord testified that the Tenant never provided him with one month's notice of her move out.

The Tenant sent an email to the Landlord on January 31, 2022, telling him her forwarding address on form #RTB-47 Tenant Notice of Forwarding Address, and also that she left a copy of it in the mailbox, and on the counter in the rental unit with the keys. The Landlord responded to that email on February 1, 2022 saying, "*You did not give notice and you forfeited your deposit as stated in the form you supplied to me. Goodbye. [Landlord]*"

The Landlord did not apply to the RTB to keep the security deposit. The Landlord stated he thought that if the Tenant does not give any notice, then she forfeits the deposit.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy.

The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The Landlord did not coordinate doing move-in and move-out inspections with the Tenant. The Landlord said there was no time to do the move-in condition inspections.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Monetary Compensation

The Tenant made a monetary claim for compensation, and I consider that now.

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, "*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.*" This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze 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.

The Tenant seeks compensation for multiple items. My analysis for each item follows below:

Air filter

The Tenant claimed because of the Landlord's in-house woodworking, the amount of dust in the air in the rental unit was an unreasonable disturbance pursuant to Section 28(b) of the Act. She claimed that the dust in the air made one of the Tenant's dogs sick. She did not claim that the dust was bothering her or her other dog. The Landlord said he used a small hobby saw in the back room of what used to be a carport in the residential property. He said the amount of sawing was so minimal that there was no dust that came of it. The Landlord points to the amount of shedding from the dogs that most likely was the reason why one of the Tenant's dogs was unwell.

I find that the Tenant has not proven on a balance of probabilities that the damage or loss suffered by her pet was on account of the dust she claimed was in the air. The vet's bill does not make any findings about this, and it seemed only one body was affected. I decline to award compensation for this claim.

Heat gun

The Tenant claimed she needed the heat gun to prove to the Landlord that the fridge temperatures were not optimal for keeping her food cold. A fridge in the rental unit was an included item in the rent according to the tenancy agreement. Section 27 of the Act states that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation. The Tenant said the previous tenant had similar problems with the fridge; however, this evidence is not proven or tested.

The Landlord stated there is a thermometer in the fridge and anyone can see the LED display in the fridge which tells the temperature, and it was obvious that it was malfunctioning.

I find that the Tenant has not proven on a balance of probabilities that the use of a heat gun that detects temperatures was needed. There was a thermometer in the fridge and

the temperature could be read from that. I find the Tenant took it upon herself to purchase this item; however, for the purposes of its use, it was unneeded. I decline to award compensation for this claim.

Groceries

Further to the non-functioning fridge, of which the Landlord agreed, the Tenant claimed she lost food that had spoiled. I find the fridge was not optimally functioning from mid-September 2021 to November 6, 2021. The Tenant claims \$260.00 to replace the food that went bad. After several weeks with the fridge not functioning properly, I find this a reasonable assessment of the lost food, and I award the Tenant **\$260.00** for its replacement.

Vet receipt

I decline to award compensation for the claim as, previously found, the Tenant has not proven on a balance of probabilities that the damage or loss suffered by her pet was on account of the dust she claimed was in the air. The vet's bill does not make any findings about this.

Movers - Air Canada Ticket - U-Haul

These expenses are the Tenant's. I do not find, if the Tenant chose to vacate, that the Landlord is responsible for any moving expenses. I decline to award compensation for these claims.

Security Deposit

Section 38 of the Act sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in Sections 38(2) to 38(4) of the Act.

I accept the testimony of the parties and based on this, as well as the documentary evidence submitted, I find the following:

- The tenancy ended January 30, 2022.
- The Tenant's forwarding address was provided to the Landlord in writing and the Landlord received this on January 30, 2022.

The Landlord had 15 days from January 30, 2022 to repay the security deposit in full or file a claim with the RTB against the security deposit. February 14, 2022 is the relevant date for the purposes of Section 38(1) of the Act.

The Landlord did not repay the security deposit or file a claim with the RTB against the security deposit within 15 days of January 30, 2022. Therefore, the Landlord failed to comply with Section 38(1) of the Act.

Sections 38(2) to 38(4) of the Act state:

38 ...

- (2) *Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].*
- (3) *A landlord may retain from a security deposit or a pet damage deposit an amount that*
 - (a) *the director has previously ordered the tenant to pay to the landlord, and*
 - (b) *at the end of the tenancy remains unpaid.*
- (4) *A landlord may retain an amount from a security deposit or a pet damage deposit if,*
 - (a) *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...*

The Landlord did not coordinate move-in and move-out condition inspections with the Tenant and therefore the Tenant has not extinguished her rights in relation to the security deposit. Section 38(2) of the Act does not apply.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. Section 38(3) of the Act does not apply.

The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. Section 38(4) of the Act does not apply.

Given the above, I find the Landlord failed to comply with Section 38(1) of the Act in relation to the security deposit and that none of the exceptions outlined in Sections 38(2) to 38(4) of the Act apply. Therefore, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenant pursuant to Section 38(6) of the Act.

The Landlord must return **\$2,000.00** to the Tenant. There is no interest owed on the security deposit as the amount of interest owed for the period of the tenancy has been 0% since 2009.

As the Tenant was mostly successful in her Application, I award the Tenant reimbursement for the **\$100.00** application filing fee pursuant to Section 72(1) of the Act. The Tenant's Monetary Award is calculated as follows:

Monetary Award

ITEM	AMOUNT
Groceries	\$260.00
Double security deposit	\$2,000.00
Application filing fee	\$100.00
TOTAL MONETARY AWARD:	\$2,360.00

For the benefit of the Landlord, the Landlord may wish to discuss with an Information Officer at the RTB the options available to him for any remaining outstanding claims. An Information Officer can be reached at:

5021 Kingsway
Burnaby, BC
Phone: 250-387-1602 / 1-800-665-8779
Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

Conclusion

I grant a Monetary Order to the Tenant in the amount of \$2,360.00. 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 of British Columbia 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 Act.

Dated: January 05, 2023

Residential Tenancy Branch