



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenant's application for return of double the security deposit and compensation for damage or loss under the Act, regulations or tenancy agreement. The tenant is seeking to recovery the cost of the filing fee paid for this application. The tenant provided evidence that he served the landlord with the hearing package, including all evidence, to the landlord by registered mail sent March 4, 2009. Both parties appeared at the hearing and were provided an opportunity to be heard.

Issues(s) to be Decided

1. Whether the tenant has established an entitlement to return of double the security deposit?
2. Amount of security deposit.
3. Whether the tenant has established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement.
4. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony and review of the tenancy agreement, I make the following findings. The tenant paid the landlord a \$500.00 security deposit on June 1, 2008. The tenant moved in to the rental unit June 10, 2008. The monthly rent was \$900.00 and the tenancy was to expire December 30, 2008. The tenant wished to end the tenancy early and gave the landlord written notice on September 30, 2008 to end the tenancy on November 1, 2008. The landlord told the tenant he must vacate the rental unit on the last day of the month. The tenant vacated the rental unit October 30, 2008.

On February 5, 2009 a hearing was held to determine the tenant's entitlement to return of double the security deposit. The Dispute Resolution Officer dismissed the tenant's application with leave to reapply in order to give the tenant the opportunity to provide the landlord with a forwarding address in writing.

For this hearing, the tenant provided a copy of a letter addressed to the landlord on February 5, 2009 demanding return of the security deposit and gave the landlord his forwarding address. The tenant testified that he sent the letter by registered mail and provided a Canada Post tracking number. The landlord acknowledged receiving "something" from the tenant by registered mail on February 9, 2009.

When asked why the landlord did not return the security deposit to the tenant, the landlord replied that the tenant owed him \$220.00 or \$225.00 in unpaid rent for October 2008 and the landlord spent \$275.00 or \$280.00 to clean the rental unit. The landlord claims he was too busy to send in the documents as evidence but acknowledged he did not have the tenant's consent, in writing, to retain the security deposit.

Upon discussing my preliminary findings concerning the security deposit, the landlord claimed he had not received all of the tenant's evidence. The tenant affirmed that he had sent all of the evidence to the landlord, including the Tenant's Application for Dispute Resolution.

With respect to the compensation for damage or loss, the tenant testified that the landlord required him to vacate the last day of the month, despite the tenant's notice indicating he would vacate November 1, 2008. The tenant acknowledged that he was not aware the month of October 31, 2008 had 31 days and moved out on October 30, 2009. The tenant stayed with a friend on the evening of October 30, 2008 and moved in

his new accommodation on October 31, 2009. The tenant is seeking compensation of \$60.00 from the landlord for having to move out two days early.

The landlord pointed out the tenancy agreement required the tenancy to continue until December 30, 2008 and the landlord did not require the tenant to move out early. Rather, the landlord acknowledged the tenant requested to move out early and the landlord told him that it would have to be on the last day of the month.

Analysis

The landlord testified that his loss and outlays with respect to the end of the tenancy equalled exactly the amount of the security deposit, yet the landlord did not produce any documentary evidence of such losses. The landlord's explanation that he did not have time to produce documents for the hearing was unreasonable given the tenant produced evidence that the tenant had served him with the notice of hearing, and other documents on March 4, 2009. Therefore, I found the tenant's testimony preferable to the landlord's testimony with respect to service of the hearing documents and evidence upon the landlord and I find the landlord was sufficiently served with all documents.

As the parties were informed during the hearing, the landlord's claims for cleaning costs or other damages were not issues for me to decide for this proceeding as the landlord had not made an application for dispute resolution. The purpose of this hearing was to hear the tenant's application for dispute resolution and determine whether the landlord complied with the Act with respect to returning the security deposit. The landlord is at liberty to make a separate application for damages or loss.

Section 38 of the Act provides for the return of security deposits. The Act permits a landlord to obtain a tenant's written consent for deductions for monies owed to the landlord; however, in this case, the landlord did not obtain the tenant's written consent

Residential Tenancy Branch
Ministry of Housing and Social Development

for any deductions. Therefore, the landlord did not have the legal right to retain the tenant's security deposit. Section 38(1) requires the landlord to either return the security deposit, and accrued interest, to the tenant or make an application for dispute resolution claiming against the security deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing.

I find that the tenancy ended October 30, 2008. The tenant provided his forwarding address to the landlord, in writing, by mailing it on February 5, 2009. In accordance with section 90 of the Act, a document that is mailed is deemed to be received five days later; therefore, I find the landlord received the tenant's forwarding address on February 10, 2009.

Since the landlord did not return the tenant's security deposit, or make an application to retain it by filing a Landlord's Application for Dispute Resolution, by February 25, 2009, the landlord did not comply with section 38(1) of the Act and the landlord must now repay the tenant double the security deposit pursuant to section 38(6) of the Act.

The Act limits the security deposit to $\frac{1}{2}$ of the monthly rent which would be \$450.00 in this case. Any overpayment is recoverable by the tenant; however, I do not find the overpayment to be considered a security deposit for purposes of section 38 of the Act and I do not double that portion.

From the testimony before me, it appears the tenancy was for a fixed term ending December 30, 2009; however, the parties acted in such a way that the landlord accepted one month of written notice as if the tenancy was a month-to-month. Where a tenant gives notice to end a month-to-month tenancy, the tenant is required to vacate on the last day of the month, which was October 31, 2009. I deny the tenant's claim for



Dispute Resolution Services

Page: 5

Residential Tenancy Branch
Ministry of Housing and Social Development

\$60.00 as I was not sufficiently satisfied that the landlord forced the tenant to move out on October 30, 2008 as opposed to the tenant's own error in believing October had only 30 days.

In light of the above, the tenant has established an entitlement to return of double the \$450.00 security deposit, recovery of the \$50.00 overpayment, interest on the original security deposit and recovery of the filing fee paid for making this application.

The tenant is provided with a Monetary Order calculated as follows:

Double security deposit (\$450.00 x 2)	\$ 950.00
Overpayment	50.00
Interest on original deposit	3.95
Filing fee	<u>50.00</u>
Monetary Order for tenant	<u>\$ 1,053.95</u>

The tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant is provided with a Monetary Order in the amount of \$1,053.95 to serve upon the landlord and enforce in the Provincial Court (Small Claims).

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: May 28, 2009.

Dispute Resolution Officer