



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the tenant for dispute resolution. The tenant filed on October 04, 2010 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of double the security deposit (\$1000) - Section 38
2. A monetary Order for compensation for loss (883.33) – Section 67
3. An Order to recover the filing fee for this application (\$50) - Section 72.

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant provided proof of registered mail and the tracking information for the mail – showing it was successfully delivered on November 10, 2011.

The tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenant submitted an abundance of photographs. The landlord has not submitted evidence in this matter or filed an application for dispute resolution associated with this tenancy. I do not have benefit of the tenancy agreement.

The undisputed testimony and other evidence in this matter are as follows.

The tenancy began on August 01, 2010 as a fixed term tenancy agreement with an end date of January 01, 2011. The tenant vacated August 15, 2010 following discussions with the landlord and with the landlord's prior knowledge. Rent in the amount of \$1000 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$500, and a key deposit of \$50.

The hearing did not have benefit of condition inspection reports or whether there was agreement between the parties as to the administration of the security deposit at the end of the tenancy. None the less, the testimony of the tenant is that the landlord was provided with a forwarding address in writing the day the tenant vacated on August 15, 2010.

The tenant testified that he viewed the rental unit in June 2010 and that the rental unit was in disrepair and required a degree of remediation. The tenant provided photographs showing certain walls and flooring in obvious need of remediation. The tenant testified that he and the landlord discussed the condition of the rental unit and that the landlord stated the rental unit would undergo, "a renovation".

The tenant testified that on July 31, 2010 he and the landlord signed a tenancy agreement, effective August 01, 2010. The tenant testified that upon possession of the rental unit, they discovered the rental unit had a number of deficiencies and was unclean. The unit required a door handle, faceplates, some painting, and there was an apparent water leak from the bathroom ceiling. The tenant provided photographs of these items. The landlord apologized and stated that all deficiencies would be fixed within a week. The tenant testified that the tenant had no choice but to take the rental unit for lack of another place to go. One week later none of the identified deficiencies were purportedly resolved and the tenant met with the landlord and provided the landlord with a letter stating that the rental unit was unacceptable and that they wanted to vacate the unit. The tenant testified that the landlord again apologized and stated that the tenant could move out and that they were released from their tenancy agreement, but that the rent paid for the month of August was not negotiable and any balance would not be returned.

The tenant seeks the return of the balance of rent for the month of August 2010, return of the security deposit and the key deposit.

Analysis

On the undisputed testimony of the tenant, and preponderance of all the evidence provided in this matter, I make the following findings.

Section 38(1) of the Act provides as follows (**emphasis for ease**)

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

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$500 and was obligated under section 38 to return this amount. The amount which is doubled is the \$500 original amount of the deposit. As a result I find the tenant has established an entitlement claim in this regard for **\$1000**. Upon the undisputed evidence in this matter, I find no basis as to why the tenant should not receive the return of the key deposit in the amount of **\$50**, and I so order it's return.

In regards to the landlord's claim for compensation for loss, it must be emphasized that in order to claim for loss under the *Act*, the party claiming the loss bears the burden of proof. Moreover, in this matter, the applicant must satisfy the following test as described in Section 7 of the *Act*:

1. Proof of the loss,

2. Proof the loss occurred solely because of the actions or neglect of the Respondent in violation of the *Act* or tenancy agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

Therefore, the claimant bears the burden of establishing their claim on the balance of probabilities. The claimant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the landlord. The claimant must then provide evidence that can verify the monetary amount of the loss. The claimant must show that reasonable steps were taken to address their situation and to mitigate their losses.

I find that the tenant's undisputed claim largely meets the components of the above test for loss and mitigation of loss, and as a result, I allow the tenant's claim in the amount equivalent to one half month's rent, or **\$500**. As the tenant has been successful in this claim, the tenant is also entitled to recovery of the **\$50** filing fee, for a total entitlement of **\$1600**.

Conclusion

I grant the tenant an order under Section 67 of the *Act* for the amount of **\$1600**. If necessary, this order may be filed 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*.