



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. Both parties were seeking monetary orders.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; to compensation for damage or loss; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition it must be decided if the tenant is entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

In her decision dated October 19, 2010 a Dispute Resolution Officer (DRO) declared the tenancy agreement had been frustrated due to a fire in the residential property and issued the tenant a monetary order directing the landlord to pay the tenant, among other things, the full amount of the \$600.00 security deposit and interest accrued since the start of the tenancy.

The tenant testified the landlord did not pay her the amount instructed in the order until after a payment hearing was scheduled and now seeks doubling the amount of the security deposit as she believes the landlord should have paid her within 15 days of the end of the tenancy.

The decision further ordered the tenant to remove her belongings and return the keys to the landlord by 6:00 p.m. on October 16, 2010. The landlord contends the tenant did not return the keys at all. The tenant testified that she placed a key on the deck of the

rental unit and that when she found another key later on she sent it to the landlord via registered mail on October 20, 2010.

The landlord contends that as a result of the tenant failing to provide her with a key the restoration company was not able to access the rental unit until October 20, 2010 at which point food had been left in the fridge (without electricity) for 30 days, since the fire.

The tenant testified that she removed the food from the fridge after she was allowed into the unit by the inspectors 5 days after the fire. The tenant goes on to say that the landlord was never restricted from having access to the rental unit as an interior door remained unlocked after the fire.

The landlord submitted into evidence a copy of a letter from the restoration company stating that they had never received a key to access the rental unit and that when they did enter the rental unit on October 20, 2010 they "emptied the fridge of rotten food, as the power had been out since the date of the fire on September 23, 2010.

The landlord has submitted into evidence an invoice from local locksmiths confirming costs associated with changing locks on the rental unit, in the amount of \$330.70. The landlord testified she had originally estimated a replacement fridge to be \$1200.00 but that she has since purchased a new fridge for \$1365.00. The landlord has provided no receipts for this purchase.

Analysis

Once a decision is made and an order granted (i.e., Monetary Order) the matter of the disposition of a security deposit is considered resolved and Section 38(6) is no longer applicable.

Section 38(6) is the clause that requires a landlord to pay the tenant double the security deposit if the landlord has failed to return the security deposit or file an application for Dispute Resolution within 15 days of the end of the tenancy and receipt by the landlord of the tenant's forwarding address.

As the security deposit disposition was ordered returned to the tenant during the hearing that effectively ended the tenancy, there was no security deposit requiring repayment at the end of the tenancy and the 15 day rule is not applicable.

As a result, I dismiss the tenant's Application for Dispute Resolution in its entirety.

In relation to the landlord's Application, I accept that the tenant failed to return the keys to the landlord on October 16, 2010 as ordered in the hearing of October 12, 2010. Putting the keys on the deck of the rental unit is not returning them to the landlord. I also accept the landlord was not able to access the rental unit as a result. I find the landlord has established the value of the replacement locks and installation at \$330.70.

In relation to the landlord's application for \$1,200.00 to replace the fridge in the rental unit, I accept the landlord's evidence, primarily the letter from the restoration company, that they found rotted food in the fridge 30 days after the fire. As such, I find the landlord is entitled to compensation for a replacement fridge. However, as the landlord has failed to provide evidence establishing the value of a replacement fridge, I find that \$500.00 would be reasonable compensation.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$880.70** comprised of \$500.00 fridge replacement; \$330.70 lock replacement; and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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*.

Dated: April 08, 2011.

Residential Tenancy Branch