



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for money owed for damage or loss and for the return of double his security deposit.

Although served with the Amended Application for Dispute Resolution and Notice of Hearing by registered mail on May 5, 2011, the Landlord did not appear. The Tenant submitted the tracking number for the registered mail, testified that the mail was sent to the address at which the Landlord conducted business as a landlord and successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the Landlord's absence.

The Tenant and advocated appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

I heard testimony that this tenancy began on November 1, 2010 and the Tenant moved out on or about December 31, 2010, monthly rent was \$925.00, the Tenant paid a security deposit of \$462.50 at the start of the tenancy and a final inspection was performed on January 18, 2011. The Tenant submitted his written forwarding address to the Landlord on the day of the inspection, January 18, 2011.

The Tenant's relevant evidence included a copy of the inspection report, a copy of the receipt for the security deposit, and a copy of a cheque in the amount of \$1,387.50 written by the Landlord made payable to the Tenant, dated January 5, 2011.

The Tenant's claim is \$2,350.00, which includes a return of rent for January 2011, the security deposit, doubled, loss of clothing and moving costs.

The Tenant testified that rent was paid for January in advance, but that the rental unit became uninhabitable due to a sewer back up, which was not corrected by the

Landlord. The Tenant also stated, due to this, he suffered a loss of his personal items and was forced to move early.

The Tenant submitted that the Landlord informed him that he did not have to stay in the rental unit due to sewer back up, and agreed to reimburse the January rent, the security deposit, moving costs and loss of personal items.

The Tenant stated that the Landlord issued him a cheque for the January rent and security deposit, but before the Tenant could receive the funds, the Landlord put a stop payment on the cheque.

Analysis

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

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of any proof or evidence from the Landlord, I find that the Tenant has established that he paid rent of \$925.00 in January 2011, but was deprived of the loss of use of the rental unit through the negligence of the Landlord. I therefore find that the Tenant has established a **monetary claim** in the amount of **\$925.00** for loss of use of the rental unit.

The evidence and testimony supports that the Tenant provided the Landlord with his written forwarding address on January 18, 2011, but has not returned the Tenant's security deposit.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. [Emphasis added]

The Landlord did not apply for dispute resolution to keep all or part of the security deposit, does not have an Order allowing him to keep the security deposit, and does not have the Tenant's written consent to retain the security deposit.

Based on the above, I find that the Landlord failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a

landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

I therefore find that the Tenant has established a **monetary claim** in the amount of **\$925.00** (\$462.50 X 2).

As to the Tenant's claim for moving expenses, these are choices the tenant made, on how to facilitate his moving and I find the Tenant has failed to provide sufficient evidence to hold the landlord responsible for choices made by the Tenant. I do not find these are costs allowed under the Residential Tenancy Act \$350.00 and I **dismiss** his claim for \$350.00.

As to the Tenant's claim for loss of clothing and personal items, I find that the Tenant has failed to prove a loss or that the Landlord was responsible for that alleged loss. I therefore **dismiss** his claim for \$150.00.

I find the Tenant has established a **monetary claim for \$1,850.00**, comprised of loss of use of the rental unit for January 2011 and the security deposit, doubled.

Pursuant to section 67 of the Act, I have provided the Tenant with a **monetary order** for \$1,850.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court should the Landlord fail to comply with this Order.

Conclusion

The Tenant is granted a monetary order in the amount of \$1,850.00.

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: June 03, 2011.

Residential Tenancy Branch