



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, PSF, O, FF

Introduction

This matter dealt with an application by the Tenant for monetary compensation for loss or damage under the Act, regulation or tenancy agreement, for the Landlord to provide services and facilities, for the return of the Tenant's security deposit and for other considerations.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on March 31, 2011. The Tenant said the Landlord will not accept the registered letters or phone calls that he has made to inform the Landlord of this proceeding. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

Issues(s) to be Decided

1. Is there a loss or damage to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for a loss or damage and if so how much?
3. Has the Landlord provided services and facilities?
4. What other considerations are there?
5. Is the Tenant entitled to the return of the double the security deposit?

Background and Evidence

This tenancy started on January 1, 2011, as a month to month tenancy. The tenancy ended February 19, 2011. Rent was \$500.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$250.00 in the last week of December, 2010. The Tenant said he gave the Landlord his forwarding address by email on March 22, 2011 and in writing with his application on March 31, 2011.

The Tenant said the Landlord requested him to move out of the rental unit on February 4, 2011 by email as a result of an altercation between the Tenant and the Landlord's son. The Tenant said he had made a complaint to the Landlord that there was no heat in his rental unit and the Landlord's son came to his rental unit and assaulted him. The Tenant said he called the Police, but there were no charges. The Tenant continued to say that he complied with the Landlord's request for him to vacate the unit by the end of February, 2011 or earlier. The Tenant said he requested to the Landlord to return his

security deposit and the rent for the time he did not live in the rental unit (February 19 to February 28, 2011). The security deposit is \$250.00 and the prorated rent is \$178.57.

The Tenant continued to say the Landlord will not respond to any of his letters, emails, text messages or phone calls and as a result he made an application for dispute resolution. The Tenant is requesting double his security deposit returned in the amount of \$500.00, the prorated rent of \$178.57, \$10.00 for mailing costs and the \$50.00 filing fee for this proceeding.

The Landlord has not made an application to the Residential Tenancy Branch and they did not attend the hearing on July 13, 2011.

Analysis

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and

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

the landlord must do one of the following:

- (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;

- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

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

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

I find from the Tenant's testimony he did give the Landlord a forwarding address in writing on March 22, 2011 by email and there on March 31, 2011 in his hearing package.

The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenant, nor did the Landlord apply for dispute resolution. Consequently I find for the Tenant and grant an order for double the security deposit of \$250.00 in the amount of \$500.00.

I further find the Tenant is entitled to recover the prorated rent from February 19, 2011 to February 28, 2011 in the amount of \$178.57 ($\$500.00 / 28 \text{ days} = \$17.857 \text{ per day} \times 10 \text{ days} = \178.57) as the Landlord did not give the Tenant proper Notice to end the Tenancy.

I dismiss the Tenant's request for compensation for mailing costs of \$10.00 for the application as these are normal costs of business and are not eligible claims.

As the Tenant has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Tenant will receive a monetary order for the balance owing as following:

Double the Security Deposit:	\$500.00	
Recover Rent	\$178.57	
Recover filing fee	\$ 50.00	
Subtotal:		\$728.57
Balance Owing		\$728.57

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$728.57 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court 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*.

Residential Tenancy Branch