



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This conference call hearing was convened in response to the tenant's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and the return of the security deposit.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and for what amount?

Is the tenant entitled to the return of the security deposit?

Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the month to month tenancy was to start on or before May 1st, 2011. The rent was \$750.00 per month and the tenant paid a security deposit of \$375.00 on March 18th, 2011.

A.B, agent for the tenant, testified that the tenant entered into a tenancy agreement with a move-in date of May 1st, 2011 or sooner. A.B. stated that on April 2nd, 2011 H.W., the landlord's agent, told the tenant that he changed his mind about the tenancy; that he declined to rent the unit to the tenant; and that he told the tenant that he could have his security deposit back. A.B. stated that he wrote H.W. a letter dated April 14th, 2011 wherein he provided H.W. with a forwarding address, and he claimed the return of the security deposit in addition to one month's rent of \$750.00. A.B. said that H.W. came to his office with the letter, that he told A.B. to go ahead with filing an application for dispute resolution and that he made no attempt to negotiate a settlement.

A.B. stated that the tenant was left homeless and unable to work for April May and June. The tenant is seeking damages for lost work due to stress which resulted in a severe break out of shingles; for pain and suffering; and loss of health caused by the landlord's breach of the tenancy agreement.

In his documentary evidence, the tenant provided in part copies of prescriptions and a doctor's note stating that the tenant has sever PH neuralgia which can last for several months.

H.W. did not argue that he ended the tenancy and that he did not return the security deposit; he disputes that the tenant's claim kept increasing with time. He testified that when he attended A.B.'s office, he was willing to return the security deposit and even more for the inconvenience, but did not agree with the full amount of the claim.

In the course of the hearing the parties were provided an opportunity to resolve this matter informally; however they could not reach an agreement a monetary settlement.

A.B. submitted that the tenant is seeking the return of double the amount of his security deposit, and \$500.00 as a global figure for storing the tenant's belongings, for being homeless, and for the related inconvenience. He stated that the tenant has significant disabilities and that he was severely impacted by the inability to move into the unit.

H.W. submitted that he was willing to give double the amount of the security deposit. He said that the tenant told him from the start that he intended to rent the unit mainly for storage purposes and that he would not be there often, which puts to question the level at which the tenant was actually impacted and the justification for the amount of the claim.

Analysis

Concerning the tenant's claim for stress, pain and suffering; the medical information does not state that the tenant's condition has any connection with this tenancy. The tenant did not show that the landlord's acted wilfully, recklessly or in a manner that caused any stress to warrant compensation for the loss of health or the loss of work. I addressed this portion of the claim during the hearing and that I would not ascribe a monetary value to this aspect of the claim.

I accept that the parties entered into a tenancy agreement and as such the landlord had certain obligations towards the tenant under the Act, specifically; the landlord had to

serve the tenant with proper notice if he wanted to end the tenancy, and that he had to return the security deposit within the required time frame.

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

In this matter the landlord received the tenants' forwarding address, but the security deposit was not returned and the landlord did not apply for dispute resolution as required by statute. Therefore the tenants are entitled to the return of double the amount of the security deposit.

I am satisfied that the H.W. received proper notice of a forwarding address, and that although he disagreed with A.B.'s claim for one month's rent, he was obliged at the very least to return the security deposit as required by statute. Since he did not file for dispute resolution, the tenant is entitled to double the amount of the security deposit.

Section 7(2) of the *Act* states in part that a landlord or tenant who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. I accept that the tenant was inconvenienced by not being allowed to move into the rental unit as agreed. The tenancy agreement is a contract of adhesion drawn by the landlord. Once signed, the tenant is obliged to accept the terms of the agreement without modification.

The tenant did not provide receipts to support his claim for storage, relocation, and related inconvenience. I find however that \$500.00 is a reasonable amount to represent a month during which the tenant was wrongfully denied possession of the rental unit, and during which he had to cover storage expenses and find temporary accommodations.

Conclusion

Pursuant to Section 67 of the *Act*, I grant the tenant a monetary order for the sum of \$1250.00.

This Order may be registered 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*.

Dated: August 19, 2011.

Residential Tenancy Branch