



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

The tenant seeks a monetary order for compensation for damage or loss, recovery of his security deposit and the filing fee paid for this application.

Both parties appeared at the hearing of this matter and gave evidence under oath.

Issues(s) to be Decided

Is the tenant entitled to the Order sought?

Background and Evidence

The tenant says this tenancy began on August 1, 2011 and ended on September 1, 2011. The tenant says he forwarding address in the Application for Dispute Resolution he served on the landlord.

The landlord agrees he received the tenant's forwarding address on the Application for Dispute Resolution but has not returned the tenant's security deposit because the tenant broke a lease and did not pay rent.

The tenant says further that when he arrived at the rental unit it was not ready for move-in. The tenant said it was filthy and the landlord had not made the repairs he said he would make. The tenant says that he arrived to move in and has his truck full of his furnishings and he had no option but to move in. The tenant says he cleaned the rental unit himself and then began his search for a new place. The tenant says he found a new place and moved out on September 1, 2011. In addition to recovery of double his security deposit the tenant is seeking on months' rent in compensation for loss and a sum to compensate him for moving expenses.

The landlord says the tenant walked through the rental unit before move-in although the landlord agrees he did not prepare a condition inspection report. The landlord says the landlord says the tenant didn't have to move in.

Analysis

With respect to recovery of the security deposit, Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

The triggering event is the provision by the tenant of the forwarding address to the landlord in writing requesting the return of the deposit. In this case the tenant's evidence is that she provided her forwarding address on the Application for Dispute Resolution. I do not find that this is the form of notice contemplated by the Act in that it would be sufficient to put the landlord on notice to return the deposit as set out in Section 38(1).

The tenant's application for recovery of the deposit is premature as he has not proven that he provided her forwarding address to the landlord save for having supplied it on the Application for Dispute Resolution which I have found to be insufficient. Her application for recovery of the deposit and her application for recovery of the filing fee paid for this application are therefore dismissed.

However, as the landlord has now received the tenant's forwarding address as set out in the Application for Dispute Resolution and, as a result of these proceedings, I find the landlord is now on notice to either return the deposit or make an application for Dispute Resolution seeking to retain the deposit. The landlord now has 15 days commencing November 24, 2011 to do so. If the landlord does not return the deposit or make application seeking to retain the deposit within 15 days, the tenant is at liberty to reapply for the return of double the deposit as set out in Section 38 of the *Residential Tenancy Act*.

With respect to the tenants claim for compensation for loss with respect to the condition of the rental unit at move in, the landlord does not dispute that the rental unit was not ready for move in so I accept that it was not ready. However, I do find the tenant's

claim for compensation to be excessive in the circumstances so I will allow the tenant a monetary award in the sum of \$400.00 to compensate him for his loss.

As the tenant has been successful in part of his claim I will also allow him to recover \$25.00 of the filing fee paid for this application.

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: November 22, 2011.

Residential Tenancy Branch