

DECISION

Dispute Codes MNDC, FF, O

Introduction

This is an application filed by the Tenant for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of the filing fee.

The Tenant attended the hearing by conference call and gave undisputed testimony. The Landlord did not attend. The Tenant states that the Landlord was served by Canada Post Registered Mail on December 6, 2011 as shown in the submitted copy of the customer receipt and a copy of the online tracking detail results. As such, I find that the Landlord was properly served under the Act.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for recovery of pro-rated rent from the frustrated tenancy?

Is the Tenant entitled to recovery of the security deposit?

Background and Evidence

This Tenancy began on September 1, 2011 on a fixed term tenancy ending on June 30, 2012 which ended on September 6, 2011. The Tenancy was frustrated because of a floor occurring on September 4, 2011 rendering it uninhabitable. The monthly rent was \$2,000.00 payable on the 1st of each month and a security deposit of \$1,000.00 was paid.

The Tenant is seeking the return of the \$1,000.00 security deposit paid. The Tenant states that a forwarding address in writing was sent by email to the Landlord on October 14, 2011.

The Tenant is also seeking to recover a pro-rated rent amount of \$1,600.00. This is based on a \$2,000.00 monthly rent pro-rated for 24 days out of the 30 in September 2011.

The Tenant seeks to recover \$2,500.00 in legal fees incurred as a result of this application.

Analysis

Section 38 of the Residential Tenancy Act states,

Return of security deposit and pet damage deposit

38 (1) 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.

I accept the undisputed testimony of the Tenant. The Tenancy ended on September 6, 2011 and the Landlord received the Tenant's forwarding address in writing on October 14, 2011. The Landlord failed to return the security deposit or file for dispute claiming against the security deposit. The Tenant has established a claim for the return of the \$1,000.00 security deposit.

I find that the Tenancy was frustrated on September 6, 2011 when the Tenant vacated the rental unit as a result of the flooding. The Tenant is entitled to the recovery of \$1,600.00 for the remaining portion of the monthly September rent.

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Tenant's claim for recovery of litigation costs are dismissed.

The Tenant has established a total monetary claim of \$2,600.00, consisting of the \$1,000.00 security deposit and the \$1,600.00 in pro-rated rent. The Tenant is also entitled to recovery of the \$100.00 filing fee. The Tenant is granted a monetary order under section 67 for the balance due of \$2,700.00.

Conclusion

The Tenant is granted a monetary order for \$2,700.00.

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: February 14, 2012.

Residential Tenancy Branch