



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: MNSD, MNDC, FF

Landlord: MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution.

The tenant filed on April 24, 2012 pursuant to the *Residential Tenancy Act* (the Act) for Orders amended in the hearing, as follows:

1. An Order for the return of *the original security* deposit (\$415.00) - Section 38
2. A Monetary order for damage or loss under the Act, Regulation or tenancy Agreement (\$375.00) – Section 67
3. An Order to recover the filing fee for this application (\$50.00)- Section 72.

The landlord filed on May 08, 2012 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows, as amended in the hearing by the landlord:

1. An Order to retain the security deposit (\$415.00) - Section 38
2. A Monetary order for damage or loss under the Act, Regulation or tenancy Agreement – Section 67
3. An Order to recover the filing fee for this application (\$50.00) - Section 72.

Both parties attended the hearing and were given a full opportunity to present relevant sworn evidence and make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on August 01, 2010. At the outset of the tenancy the landlord collected a security deposit in the amount of \$415.00. At the outset of the tenancy the parties conducted a start of tenancy inspection. The parties agree that at the end of the tenancy the parties did not conduct an end of tenancy inspection, and at the end of the tenancy the landlord attempted to return the full security deposit by mail soon after the tenancy ended March 31, 2012 – and the mail was subsequently returned as the address provide by the tenant was non-existent. The landlord provided evidence of the returned mail and the tenant acknowledges they provided the landlord with an improper address. The landlord now still holds the original security deposit and seeks to retain a portion of it for costs incurred by them to mitigate the tenant's purported claims in the courts. The landlord has not submitted any document evidence in support of a claim to retain the security deposit. The tenant seeks return of the original security deposit.

The tenant also seeks return of \$375.00 for parking fees paid under the tenancy agreement during the tenancy, which the tenant claims they should not have paid because the parking spot they occupied was not situated on the landlord's property, but on property belonging to the local government. The tenant provided an aerial photograph of the landlord's property on the pertinent street – which photograph contains an outline of the properties on that street. The tenant claims the parking spot they occupied is situated outside of the outline on the aerial photograph – and so indicated. The tenant testified they obtained the aerial photograph of the landlord's street from the local government authority. The landlord disputes the tenant's claim and provided their own evidence respecting the landlord's property.

Analysis

On preponderance of the evidence submitted and the sworn testimony of the parties, I find as follows:

Tenant's claim

I find that the landlord accepted that the tenant was entitled to return of the security deposit at the end of the tenancy, and I accept their supporting evidence that they proceeded to return the security deposit upon the tenant vacating at the end of March 2012. The landlord's current rationale for now wanting to retain a portion of it is not relevant to this tenancy or an entitlement for the landlord. As the landlord did not conduct an end of tenancy inspection, the landlord's right to make a claim against the security deposit has been extinguished. As a result, the landlord is not permitted to retain any of it, and the tenant is therefore entitled to its full return – as originally

intended by the landlord's own evidence. I grant the tenant their original security deposit in the amount of **\$415.00**, without leave to reapply.

It must be noted that the burden of proof lies with the applicant in claims of damage or loss. In respect to the tenant's claim for the return of parking fees paid during the tenancy, I find the tenant's evidence purporting that their parking was situated on public land is not sufficient to support this claim. The tenant's own evidence of an aerial photograph states that, (the) *information is provided for information and convenience purposes only. Lot sizes and legal descriptions must be confirmed at the Land Title Office* . I find that the tenant's evidence is not sufficient to establish, on a balance of probabilities, that the landlord fraudulently collected parking fees to which they were not entitled. As a result, **I dismiss** this portion of the tenant's claim without leave to reapply.

The tenant is entitled to recover the **\$50.00** filing fee for this application, for a sum entitlement of **\$465.00**.

Landlord's claim

The landlord's right to make a claim against the security deposit was extinguished, and therefore they are not entitled to retain any of the tenant's security deposit. The landlord has not provided evidence to support a claim of compensation under this tenancy agreement, or provided evidence of a valid basis of a compensable claim under the Act. If the landlord has incurred costs associated with an action in the courts, they may look to the court in respect to a claim for compensation. As result of all the above, **I dismiss** the landlord's application in its entirety, without leave to reapply.

Conclusion

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$465.00**. If necessary, this order may be filed 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: June 19, 2012

Residential Tenancy Branch