



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MNDC, MNSD, FF, O

For the landlord – MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to both parties' applications for Dispute Resolution. The tenant has applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; an Order for the return of double the security deposit; other issues; and to recover the filing fee from the landlord for the cost of this application. The landlord has applied for a Monetary Order for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The parties advised me during the hearing that the landlord has had two previous applications and hearings one on April 12, 2012 where the landlord had applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. At that hearing the landlord's application was dismissed with leave to reapply. A second hearing was held on May 01, 2012 to deal with the landlord's application for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and a Monetary Order for money owed or

compensation for damage or loss under the *Act*. The landlord did not appear at that hearing however the tenant did appear and the landlord's application was dismissed without leave to reapply.

The landlord has filed another application for the same issues excluding the Order of Possession as the tenant has vacated the rental unit. *Section 77* of the *Act* states that, except as otherwise provided in the *Act*, a decision or an order is final and binding on the parties. Therefore any findings made by the Dispute Resolution Officer that presided over the prior hearing are not matters that I have any authority to alter and any decision that I render must honour the existing findings. The landlord's application in this matter concerns the landlords request for some of the same issues that have previously been dismissed without leave to reapply. Therefore the landlord is now barred by the common law principle, *res judicata*, from pursuing it again.

Issue(s) to be Decided

- Is the tenant entitled to recover double her security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the *Act*?

Background and Evidence

The parties agree that this month to month tenancy started on December 15, 2007. This was a verbal agreement between the parties for the tenant to rent this unit at a monthly rent of \$650.00 due on the first day of each month. The tenant paid a security deposit of \$320.00 on December 04, 2007. The parties also agree that the tenant sent her forwarding address to the landlord by registered mail on May 30, 2012.

The tenant testifies that she moved from the rental unit on April 27, 2012. She gave the landlord her forwarding address and a request for the landlord to return her security deposit. The tenant testifies that the landlord failed to return her security deposit and accrued interest within 15 days. The tenant testifies that she did not give the landlord permission to

keep all or part of her security deposit so the tenant seeks to recover double her security deposit.

The tenant seeks to recover from the landlord the costs incurred to send two registered mail letters to the landlord at a sum of \$9.92 each; the tenant also seeks to recover her filing fee of \$50.00.

The landlord testifies that the tenant did not move from the rental unit until May 02, 2012 and the tenant failed to pay rent for February, March and April, 2012. The landlord testifies he kept the security deposit against the unpaid rent.

The tenant has provided a copy of the receipt showing the amount of the security deposit paid at the start of the tenancy, a copy of the letter containing her forwarding address and request for the return of the security deposit and the registered mail tracking details.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on June 05, 2012. When Registered Mail is sent to a party it is considered to be received by the party five days after it was posted pursuant to s. 90 of the *Act*. As a result, the landlord had until June 20, 2012 to return the tenants security deposit. I find the landlord did not return the security deposit and has not filed a claim to keep the security deposit. Therefore, I find that the tenant has established a claim for the

return of double the security deposit to the sum of \$640.00 plus accrued interest on the original amount of \$5.17 pursuant to section 38(6)(b) of the *Act*.

With regard to the tenants claim for registered mail costs; there is no provision under the *Act* for mailing costs to be awarded to party. Consequently this section of the tenants claim is dismissed.

I find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*. The tenant is entitled to a Monetary Order for the following amount:

Double the security deposit	\$640.00
Accrued interest on original amount	\$5.17
Filing fee	\$50.00
Total amount due to the tenant	\$695.17

Conclusion

With regard to the landlords application; as the principle of res judicata applies. The landlord's application is therefore dismissed in its entirety without leave to reapply.

I HEREBY FIND largely in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$695.17**. 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*.

Dated: August 22, 2012.

Residential Tenancy Branch