



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This is an application under the *Residential Tenancy Act* (the “Act”) by the tenant for a monetary order for return of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant and the landlord attended the hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

The landlord confirmed receipt of the tenant’s evidence package and that he had the opportunity to review it prior to the hearing. I find the landlord was served in accordance with the Act.

Issues to be Decided

- Did the landlord comply with section 38 of the Act regarding the security deposit?
- Is the tenant entitled to a monetary order under the Act?

Background and Evidence

The parties agree that the tenancy began on January 1, 2007. Rent was initially \$800.00 due on the first day of the month, and was subsequently increased to \$840.00 over the course of the tenancy. A security deposit of \$400.00 was paid by the tenant at the start of the tenancy.

The parties agree that the tenant received a 2 Month Notice to End Tenancy (the “Notice”) and pursuant to that Notice; the tenant was entitled to compensation, the equivalent of one month’s rent. The parties agree that rent for July 2012 was provided at no charge to the tenant as compensation pursuant to the Notice served by the landlord.

The landlord confirmed receiving a written letter from the tenant dated July 6, 2012 indicating that he would be vacating the rental unit early 10 days later on July 16, 2012. Both parties agree that the tenant did not vacate the rental unit until July 17, 2012.

After vacating the rental unit, the tenant confirms that he received \$212.09 of his original \$400.00 security deposit from the landlord. The landlord confirmed that he continues to hold \$200.00 of the tenant's original security deposit, and has not filed an application to claim against security deposit under the *Act*. The parties agree that on June 29, 2012, the tenant provided his written forwarding address to the landlord.

The tenant is also claiming \$420.00 consisting of compensation for two weeks rent after he vacated the rental unit between July 18, 2012 and July 31, 2012.

Analysis

Based on the above and the evidence provided during the hearing, and on a balance of probabilities, I find the following.

Tenant's claim for compensation for two weeks rent – The parties agree that July 2012 rent was provided at no charge to the tenant as compensation for the landlord's 2 Month Notice to End Tenancy. This compensation is deemed to be rent paid by the tenant for July 2012.

The parties also agree that the tenant provided written notice on July 6, 2012 that the tenant would be vacating the rental unit early, and 10 days later on July 16, 2012. The tenant did not vacate the rental unit until July 17, 2012. Section 50 of the *Act* allows the tenant to end the tenancy early after providing 10 days notice in writing to the landlord. The tenant is only required to pay rent until the effective date of their notice. Any days remaining, the landlord is to return that portion of the compensation as a refund to the tenant. Therefore, **I find** the tenant did provide 10 days written notice to the landlord and is therefore entitled to compensation for the remaining days after he vacated the rental unit in July 2012.

The tenant vacated the rental unit on July 17, 2012. Therefore, **I find** the tenant is entitled to compensation for the 14 days of July 18, 2012 to July 31, 2012 inclusive. Monthly rent was \$840 per month. As there are 31 days in July, the daily rate for rent is \$27.10. 14 days at \$27.10 per day equals \$379.40. Given the above, **I find** the tenant has established a monetary claim in the amount of **\$379.40** consisting of the remaining days of July 2012 that he is entitled to be compensated for, pursuant to sections 50 and 51 of the *Act*.

Tenant's claim for return of the security deposit - The parties confirmed that the tenant provided his forwarding address to the landlord in writing on June 29, 2012.

Section 38 of the *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.**

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) **must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

[emphasis added]

Given the above, **I find** that the landlord breached section 38 of the *Act* by failing to repay the full security deposit within 15 days of receiving the tenant's forwarding address on June 29, 2012, and failing to make an application for dispute resolution claiming against the deposit. Therefore, **I find** the tenant is entitled to the return of **double his original security deposit** as follows:

Original amount of security deposit	\$400.00
Double original security deposit due to landlord non compliance with Section 38 of the <i>Act</i>	\$400.00

Interest on original security deposit from January 1, 2007 to July 31, 2012	\$12.09
Less amount returned by landlord	(\$212.09)
Balance owing to tenant	\$600.00

I caution the landlord that a security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from a Dispute Resolution Officer, or the written agreement of the tenant. In the matter before me, the landlord did not have any authority under the *Act* to keep any portion of the security deposit, and was provided the written forwarding address by the tenant.

As the tenant's application had merit, **I grant** the tenant the recovery of the filing fee in the amount of **\$50.00**. Therefore, **I find** the tenant has established a total monetary claim of **\$1,029.40** consisting of \$600.00 owing for the balance of the doubled security deposit less the amount the landlord has already returned, \$379.40 for the compensation towards July 2012 rent after the tenant provided 10 days written notice, and the \$50.00 filing fee.

I grant the tenant a monetary order pursuant to section 67 of the *Act*, in the total amount of **\$1,029.40**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find the tenant is entitled to compensation in the amount of \$379.40 as compensation for July 2012 rent due to the 2 Month Notice issued by the landlord.

I find the tenant is entitled to double his original security deposit as described above.

I grant the tenant a monetary order in the amount of \$1,029.40.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: October 05, 2012

Residential Tenancy Branch