



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant only.

The tenant submitted documentary evidence the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on September 15, 2012 in accordance with Section 89.

I note the address for service used was the address the landlord had provided on the tenants Shelter Information form submitted to the Ministry of Social Development for confirmation of her rental information. This document is signed by the landlord acknowledging the information is correct.

As per Section 90, the documents are deemed received by the landlord on the 5th day after it was mailed. Based on this evidence of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled; to a monetary order r all or part of the security deposit and for compensation for damage or loss, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant testified the tenancy began on January 1, 2012 as a month to month tenancy for a monthly rent of \$600.00 due on the 1st of each month with a security deposit of \$300.00 paid. The tenancy ended when the tenant vacated the rental unit by May 31, 2012.

The tenant testified she provided the landlord with her forwarding address in writing, personally on June 15, 2012 and that she had not received the security deposit back up to and including the day of this hearing.

The tenant testified that she had, within a couple of months from the start of the tenancy, discovered that her clothing was being damaged by the dryer either by holes appearing or with some kind of grease staining.

She stated she had informed the landlord in March 2012 and that he failed to do anything about it until the last week of her tenancy. The tenant testified that she continued to use the dryer for the duration of the tenancy, as she had no choice.

The tenant seeks compensation in the amount of \$2,000.00 and has provided photographic evidence of the damaged clothing listing some prices on the back of the photographs.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

I find, based on the undisputed testimony of the tenant, that the landlord failed to repair the dryer and that as a result the tenant has suffered a loss for damage to her clothing. While the tenant has not provided any receipts for clothing, based on the photograph evidence I find her estimate of \$2,000.00 to be reasonable.

However, as the tenant continued to use the dryer even after she reported it to the landlord and she was well aware of what would happen to her clothing if she used it, I find the tenant failed to take all reasonable steps to mitigate her losses and as a result I reduce the value of her claim to \$500.00.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I find, based on the undisputed testimony of the tenant, that the tenancy ended on May 31, 2012 and that she provided the landlord with her forwarding address in writing by

June 15, 2012. In order to be compliant with Section 38(1) the landlord would have had to return the deposit in full or file an Application for Dispute Resolution to claim against the deposit no later than June 30, 2012.

Based on the tenant's testimony, I find the landlord failed to comply with Section 38(1) and the tenant is entitled to return of double the amount of the deposit.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant the tenant a monetary order in the amount of **\$1100.00** comprised of \$500.00 clothing compensation and \$600.00 double the amount of the security deposit.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: December 1, 2012.

Residential Tenancy Branch