



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with applications by the landlord and the tenant. The landlord applied for monetary compensation and an order to retain the security deposit in partial compensation of the monetary order. The tenant applied for recovery of the security deposit and other monetary compensation.

The landlord did not call in to the teleconference hearing. An agent for the tenant and an advocate for the tenant called in and were prepared to proceed with both applications. I therefore dismissed the landlord's application.

The tenant's agent and advocate stated that the tenant's application was served at the landlord's business address. I informed the tenant's agent and advocate that I had received evidence submitted by the landlord as evidence on the tenant's application. The tenant did not receive this evidence. I found that the landlord was served with the tenant's application and proceeded to hear the tenant's evidence on his application. I did not admit the landlord's documentary evidence, as the tenant did not receive it and the landlord did not attend the hearing to address this evidence.

Issue(s) to be Decided

Is the tenant entitled to recovery of the security deposit?
Is the tenant entitled to other monetary compensation as claimed?

Background and Evidence

The tenant's evidence was that the landlord showed the tenant one rental unit, #214, and they filled out a shelter agreement for a tenancy beginning August 30, 2012. The tenant paid \$200 for a security deposit and \$400 for rent for the month of September 2012. There was no condition inspection done at the outset of the tenancy.

The tenant was given room #310, a different room than the one he had been shown. The room was filthy, there were cockroaches, and the neighbours were very noisy. The

tenant tried dealing with the building manager but found her intense and impossible to talk to. On September 6, 2012 the tenant gave the landlord written notice that he was going to move out on September 12, 2012. The tenant moved out on September 12, 2012. The tenant provided his forwarding address in writing on September 12, 2012. The landlord did not return the security deposit.

In support of his application, the tenant submitted a copy of the shelter agreement, letters to the landlord addressing the condition of the room, the tenant's notice to vacate and the letter providing his forwarding address. The tenant has claimed return of his security deposit, return of rent in the amount of \$240 for September 13-30, 2012, and \$2,000 in compensation for loss of quiet enjoyment.

Analysis

Security Deposit

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit. Furthermore, where a landlord has failed to comply with the requirement to conduct a move-in inspection, the landlord's right to claim the security deposit is extinguished. The landlord therefore must return the security deposit.

In this case, the tenancy ended on September 12, 2012, and the tenant provided his forwarding address in writing on that date. The landlord extinguished their right to claim the security deposit, as they did not do a move-in inspection. Additionally, the landlord's application was dismissed. The landlord has failed to repay the security deposit within 15 days of receiving the tenant's forwarding address in writing. I therefore find that the tenant has established a claim for double recovery of the security deposit, in the amount of \$400.

Return of Pro-Rated Rent

Based on the tenant's undisputed evidence, I find that the tenant was forced to move out of the rental unit based on the conditions of the unit and the building, and the landlord's unwillingness to address those conditions. I therefore find that the tenant is entitled to recovery of the rent for the balance of September 2012, in the amount of \$240.

Loss of Quiet Enjoyment

I accept the tenant's undisputed evidence that he suffered a loss of quiet enjoyment for the 13 days that he occupied the rental unit. The room was filthy and infested with cockroaches, the neighbours were excessively noisy, and the building manager was uncooperative. However, I find that the tenant is only entitled to a portion of the rent for those days that he occupied the room, as quiet enjoyment is only a portion of what tenants are provided when they rent a unit. The tenant did not apply for aggravated damages, and I therefore will not consider a claim for a higher amount than the amount of the rent. In this case, I find that the tenant's loss of quiet enjoyment was fairly severe, and on that basis I find he is entitled to compensation equivalent to 50 percent of his rent for August 30, 2012 to September 12, 2012, in the amount of \$80.

Conclusion

I grant the tenant an order under section 67 for the balance due of \$720. 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: December 14, 2012.

Residential Tenancy Branch