



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wilson Recovery Society, 50 East Cordova Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MNDC

Introduction

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation under section 38, as well as compensation for damage or loss under the Act.

I accept the tenant's undisputed testimony and evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by registered mail, and personally, in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant's counsel provided the tracking number for the registered mail, and as well testified in respect to the landlord being sent /provided with the tenant's evidence package for this matter, also before me.

Counsel for the tenant (**the tenant**) testified they have the tenant's instructions to proceed in their absence. Tenant's counsel was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed facts before me are as follows. The residential unit is a single room occupancy (SRO) unit in the urban downtown area.

I do not have benefit of a written tenancy agreement. The tenant testified their tenancy began on March 01, 2011, and ended on July 01, 2011 on the tenant's own volition. The landlord collected a security deposit of \$212.50 at the outset of the tenancy. The tenant testified that on October 01, 2011 they sent the landlord their forwarding address in writing and that none of their security deposit has been returned. The tenant seeks return of their security deposit.

The tenant also provided details of their dispute in which they described a series of deficiencies of their unit during their 4 month tenancy – including a claimed infestation of bedbugs, mould growth about the sink, a leaky faucet and drafty windows, broken / damaged sink, unclean communal bathroom with purported feces on wall, a non-functioning lock to the unit, allowing others unhindered access, large holes in the unit walls, non-operating fridge and stove in the communal kitchen, purported cockroach infestation in the communal kitchen, and rodent feces and urine in many parts of the residential property.

The tenant provided photographic evidence of the unit conditions as well as a report from the City dated March 01, 2011 respecting a lengthy listing of violations of the City Standards of Maintenance By law, and the Building By-law, with references to a long-standing nature of infractions. In particular and in part, the City Reports reference the tenant's own unit – indicating the ceiling light is not working, the wall under the sink is damaged, and the seal between the window frame and the wall is missing. The photographs of the unit depict all of the claimed damage conditions. The tenant claims that they repeatedly requested remedies to the pest infestations and for repairs to their unit, but that these requests were not attended, and there were no improvements to any of the overall conditions of the residential property. The tenant seeks compensation by way of *nominal damages* – expressing rent abatement and the equivalent of one month's rent for homelessness.

Analysis

On preponderance of the relevant evidence and on the balance of probabilities, I have reached a decision.

Section 38(1) of the Act provides as follows (emphasis for ease)

- 38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**
- 38(1)(a) the date the tenancy ends, and
 - 38(1)(b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord **must** do one of the following:
- 38(1)(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;
 - 38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

- 38(6) If a landlord does not comply with subsection (1), the landlord
- 38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$212.50 and was obligated to return this amount. The amount which is doubled is the original amount of the deposit. As a result I find the tenant has established an entitlement claim for \$425.00.

I find the tenant has provided sufficient evidence to establish that the conditions in their rental unit and the common amenities of the residential property were more than aptly compromised so as to significantly reduce the value the tenancy agreement. As a result, I grant the tenant compensation as rent abatement in the limited total amount of \$850.00, without leave to reapply – for a total entitlement of **\$1275.00**.

Conclusion

I grant the tenant an Order under section 67 for the sum of **\$1275.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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: May 15, 2013

Residential Tenancy Branch