



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was only attended by the tenant.

Issue(s) to be Decided

Whether the tenant is entitled to a monetary order for all or part of the security deposit; and to recover all or part of his, pursuant to Sections 38, 67, and 44 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant testified he served the landlord with a notice of this hearing on July 1, 2013 by delivering it to his mail box. On the application for dispute resolution is the tenant's current address. The tenant testified that he telephoned the landlord on July 1, 2013 and during that conversation he acknowledged delivery of the documents. Based on the above, I find that the landlord has been sufficiently served with the notice of hearing documents on July 1, 2013 pursuant to section 71(2)(b) the *Residential Tenancy Act (Act)*. The tenant testified the tenancy began on June 1, 2013 as a month to month tenancy with a monthly rent of \$ 400.00 due on the 1st of each month and that a security deposit of \$ 150.00 was paid on June 2, 2013. The tenant testified that on July 10, 2013 the landlord asked the tenant to vacate the unit because the other co-tenant who had a separate tenancy agreement with the landlord, failed to pay his portion of the rent. The landlord changed the locks and retained the tenant's personal property. The tenant claimed for the recovery that property. This was not part of the original claim and I therefore declined to hear it, however I give the tenant permission to reapply for compensation and or the return of his property. The tenant seeks recovery of his rent as he claims he was wrongfully evicted as well as recovery of his security deposit as he testified to date it had not been returned and he had not given the landlord permission to retain any portion of it.

Analysis

I find that the landlord had not ended the tenancy in accordance with any of the prescribed methods found in section 44 of the Act and therefore by changing the locks had wrongfully evicted the tenant. The tenant is therefore entitled to recover \$ 280.00 equal to all the rent he paid less \$ 120.00 representing rent for the nine days he actually resided in the unit. Section 38(4) states that the landlord may retain an amount from a security deposit or a pet damage deposit if at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. I accept the tenant's evidence that there was not any written agreement from the tenant at the end of the tenancy regarding the retention. I find the landlord had no authority to retain any amount from the security deposit. Section 38(1) of the Act stipulates that the landlord must, within 15 days of the end of the tenancy or receipt of the tenant's forwarding address, return the security deposit to the tenant or file an Application for Dispute Resolution to claim against the security deposit for any damage or loss the landlord may have incurred. I find that the landlord had been served with the tenant's application for dispute resolution *containing his forwarding address* on July 1, 2013. To be compliant with Section 38(1) the landlord would have to return the security deposit to the tenant, or file his own application no later than July 16, 2013. I find that as the landlord failed to comply with section 38 (1) therefore I award the tenant double the amount of the security deposit held pursuant to section 38(6) amounting to \$ 300.00. The tenant has proven a total claim of \$ 580.00.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$ 580.00** comprised of double the security deposit and a portion of the rent he paid but did not obtain possession of the unit as a result of the landlord's wrongful eviction. 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: July 22, 2013

Residential Tenancy Branch