



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF, MNR, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For a monetary order for money owed
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return all or part of the security deposit;
2. For a monetary order for compensation for loss under the Act; and
3. To recover the cost of filing the application.

Landlord's application

This matter was set for hearing by telephone conference call at 9:30A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the tenant. Therefore, as the landlord did not attend the hearing by 9:40 A.M, and the tenant appeared and was ready to proceed, I dismiss the landlord's application without leave to reapply.

Tenant's application

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on November 8, 2013, and were successfully received by the landlord on November 12, 2013. A Canada post tracking number and confirmation of delivery were filed as evidence. I find that the landlord has been duly served in accordance with the Act.

The tenant testified that their evidence was sent by registered mail sent on November 11, 2013, and was successfully received by the landlord on November 13, 2013. A Canada post tracking number was provided and a confirmation of delivery was filed as evidence. I find that the landlord has been duly served in accordance with the Act.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation under the Act?

Is the tenant entitled to the return of their security deposit?

Background and Evidence

The parties entered into a twelve month fixed term tenancy which began on July 1, 2013. Rent in the amount of \$1,025.00 was payable on the first of each month. A security deposit of \$512.50 was paid by the tenant. The tenancy ended on August 31, 2013.

The tenant claims as follows:

a.	Return of security deposit	\$ 512.50
b.	Purchase of flea product	\$ 40.17
c.	Rent reduction for July 2013	\$ 300.00
d.	Filing fee	\$ 50.00
	Total claimed	\$ 902.67

Return of security deposit

The tenant testifies that he provided the landlord with his forwarding address on July 26, 2013, by email. Filed in evidence is a copy of the email.

Purchase of flea product

The tenant testified that when he took possession of the rental unit there was a flea infestation, which he attempted to resolve as the landlord was away. The tenant stated that treatment that he tried was unsuccessful and exterminators were required to treat the unit. The tenant seeks to recover the cost he paid for flea treatments prior to the exterminators attending. Filed in evidence are receipts.

Rent reduction

The tenant testified that the flea infestation was so bad, that he was not able to fully enjoy the rental unit for a large portion of July. The tenant stated the parties were attempting to negotiate a fair amount for compensation for the loss of enjoyment and that both parties suggested \$300.00 was a fair amount, however, that agreement was not finalized. Filed in evidence are email threads between the parties.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the tenant has the burden of proof to prove their claim.

Return of security deposit

The evidence of the tenant was that he provided the landlord with his forwarding address on July 26, 2013, by email.

In this case, the tenant has submitted a copy of the email as evidence. While I accept email was a regular form of communication between the parties there is no evidence to suggest this email was received by the landlord. As a result, I find the tenant has provided insufficient evidence to prove that the landlord was service with their forwarding address in a method approved of the Act. As I note the landlord's application does not have the same unit number listed as in the email sent by the tenant.

However, the landlord had file an application for dispute resolution, seeking to retain the tenant's security deposit and the tenant was served with that application. As the landlord failed to attend the hearing and their application was dismissed. I find the landlord is not entitled to retain any portion of the tenant's security deposit. Therefore, I find the tenant is entitled to the return of the security deposit in the amount of **\$512.50**.

Purchase of flea product

The evidence of the tenant was that when he took possession of the rental unit there was a flea infestation, which he attempted to resolve as the landlord was away. The evidence of the tenant was that the treatment he tried was unsuccessful and exterminators were required to treat the unit.

In this case, the evidence submitted by both parties indicated that the rental unit had a flea infestation when the tenant took possession of the rental unit. The landlord was away for a short period of time and the tenant made reasonable efforts to resolve the issue without have the expense of an exterminator, however, that treatment was unsuccessful. As the landlord provided to the tenant the unit with a flea infestation, I find the tenant is entitled to recover the cost of the flea treatment, which is supported by receipt. Therefore, I find the tenant is entitled to compensation for their loss in the amount of **\$40.17**.

Rent reduction

The evidence of the tenant was that the flea infestation was so bad, that he was not able to fully enjoy the rental unit for a large portion of July. The evidence of the tenant was that the parties had attempted to negotiate a fair amount for the loss of enjoyment and the amount suggested by both parties was \$300.00, however, that was not formalized in writing by the parties.

Upon my review of the email threads between the parties, it is apparent that the landlord had agreed that the value of the tenant's loss of enjoyment was valued at \$300.00. Therefore, I find the tenant is entitled to compensation for his loss of enjoyment of the rental unit for the month of July 2013, in the amount of **\$300.00**.

I find that the tenant has established a total monetary claim of **\$902.67**, comprised of the above described amounts and the \$50.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant is granted a monetary order in the above amount.

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 11, 2013

Residential Tenancy Branch

