



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METROTOWN INVESTMENTS CTB.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MNDC, MNR, FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution.

The tenant applied January 20, 2014 and seeks orders pursuant to an un-amended application under the *Residential Tenancy Act* (the Act) as follows:

1. A Monetary Order for loss / return of security deposit - Section 38

The tenant also applied for Orders which the tenant acknowledges are no longer relevant to this matter in respect to their belongings and the landlord's right to enter the rental unit.

The landlord applied January 30, 2014 and seeks orders pursuant to an un-amended application under the *Residential Tenancy Act* (the Act) as follows:

1. A monetary Order for loss of revenue – Section 67
2. An Order to retain the security deposit as set off - Section 38
3. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given a full opportunity to present relevant evidence to their matters and make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The landlord acknowledged receiving the tenant's application and relevant evidence to this application. The landlord provided evidence that they served the tenant with Notice of their application by registered mail to the address provided by the tenant which was unclaimed. However, Section 90 of the Act deems the registered mail to have been received. It must be noted that failure to accept registered mail when sent as prescribed by Section 89 of the Act is not a ground for review. Regardless, the tenant was orally provided with the particulars of the landlord's

application and the accompanying evidence of a copy the tenancy agreement of the parties, and the tenant accepted they understood the contents of the landlord's application and had opportunity to respond to the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began as a fixed term tenancy on January 01, 2014 when the parties completed and signed their tenancy agreement on the same date and the landlord collected a security deposit in the amount of \$440.00 in cash. The agreed rent was \$880.00 per month. The tenant was not permitted to occupy the rental unit, as agreed, when the tenant was unable to satisfy the rent for January 2014 on the day they were moving in or thereafter. Effectively, the tenant did not occupy the rental unit. The landlord did not provide the tenant with any notice to end the tenancy. The tenant explained that they could satisfy the rent within the remaining week following the statutory holiday of January 01, 2014. The landlord seeks the rent for January and February 2014 as loss of revenue pursuant to the fixed term of the tenancy agreement.

The tenant claims that on January 02, 2014 they faxed the landlord their forwarding address - which the landlord denies receiving until near the end of January 2014 after which they filed their application. This hearing does not have benefit of evidence to support either of the parties' versions of events, although the burden of proof for this matter rests with the tenant. The tenant seeks for the return of the security deposit and compensation as prescribed by Section 38 of the Act. The tenant claims that they have other claims against the landlord for which they have not advanced evidence to this matter nor for which they amended their application, although they claim to have supporting evidence for other claims.

Analysis

On preponderance of the relevant document evidence submitted and the testimony of the parties, I find as follows:

Landlord's claim

It must be noted that the start of rights and obligations of landlords and tenants is when they enter into an agreement for a tenancy and any required security deposit is satisfied. In this matter, these rights and obligations began on January 01, 2014. In this

matter, when the tenant could not satisfy the rent on January 01, 2014 it was available to the landlord to give the tenant a 10 Day Notice to End Tenancy for unpaid rent – affording the tenant 5 days in which to satisfy the rent. But instead, the landlord denied the tenant occupancy of the unit. As a result, the landlord is effectively responsible for creating the loss of revenue which they now claim. The landlord cannot expect for the tenant to satisfy the rent on accommodation they were not permitted to occupy. I **dismiss** the landlord's application in its entirety.

Tenant's claim

I find that the tenant's claim for *double* the original amount of the security deposit is not supported by evidence required to establish that entitlement in accordance with Section 38(1) of the Act. However, as I have dismissed the landlord's application to retain the deposit the landlord is not entitled to keep the tenant's deposit, therefore it is only appropriate that I return to the tenant their original deposit of **\$440.00**.

The tenant has not provided sufficient evidence to support other claims and as such all other claims are hereby **dismissed**, with leave to reapply.

Conclusion

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

I **grant** the tenant an Order under Section 67 of the Act for the amount of **\$440.00**. 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: February 18, 2014

Residential Tenancy Branch