



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 an application by the tenant for an order for the return of double the security deposit, for compensation for the loss of food when the refrigerator broke down and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issue(s) to be Decided

Is the tenant entitled to the return of double the security deposit? Is the tenant entitled to compensation and the filing fee?

Background and Evidence

The tenancy began on May 01, 2013 and ended on October 31, 2013. Prior to moving in, the tenant paid a deposit of \$800.00. The landlord stated and the tenant agreed that she did not give the landlord her forwarding address in writing, until she served the landlord with this hearing package which contained a notice of hearing and a copy of the tenant's application.

The tenant stated that in October 2013, she was out of town for four days and upon her return on October 15, she found that the refrigerator was not working properly. The tenant stated that the food was still cold when she notified the landlord. The landlord had a handy man check out the refrigerator the next day and a part was ordered. The part arrived on October 21, 2013. The testimony of both parties differed at this point. The landlord stated she sent a repair man to the rental unit on October 21 and there was no one home. She stated that she informed the tenant about the visit earlier that day. The tenant stated that she was not notified.

On October 23, a week after the problem was reported to the landlord, the tenant instructed the landlord not to bother fixing the appliance.

The tenant is claiming \$400.00 for lost food and \$440.00 for the cost of eating out. The tenant did not file any receipts to support the cost she incurred.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

In this case, the tenant failed to provide the landlord with her forwarding address in writing and is therefore not entitled to the return of double the security deposit. However, I find that the tenant is entitled to the return of the base amount of the security deposit.

Section 32 of the *Residential Tenancy Act*, states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, make it suitable for occupation by a tenant.

Based on the sworn testimony of both parties I find that the refrigerator was a service that was included in the rent and that the tenant reported a problem with the appliance on October 15, 2013. I further find that the landlord followed up immediately and was required to order a part. On October 23, 2013, the tenant informed the landlord that she was no longer interested in having the appliance restored to its working condition.

Based on the above I find that the refrigerator malfunctioned and the landlord took immediate steps to fix it. However, the tenant was left without this service for one week.

I find that the tenant is entitled to compensation for the inconvenience suffered by her. I now have to determine the amount of compensation that the tenant is entitled to.

The tenant has made a claim of \$840.00 as compensation for food lost and the cost of eating out. She has provided a list of food items that she disposed off along with an estimated cost of each item. Upon review of the list, I find some items that did not require refrigeration. I also found that the cost assigned to most of the items is unreasonable.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the testimony of both parties, I find it appropriate to award the tenant a nominal award of \$75.00 for the inconvenience she endured due to the malfunctioning refrigerator.

Since the tenant did not provide her forwarding address to the landlord and made this claim after she notified the landlord that she was not interested in the refrigerator being replaced, she must bear the cost of filing her own application.

The landlord currently holds a security deposit of \$800.00 and is obligated under section 38 to return this amount. The tenant has established a claim of \$75.00 as compensation for a total claim of \$875.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for **\$875.00**.

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 13, 2014

Residential Tenancy Branch

