



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; a Monetary Order to recover the security deposit; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on January 20, 2014. Canada Post tracking numbers were provided by the tenant in documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a a Monetary Order to recover the security deposit?

Background and Evidence

The tenant testifies that this tenancy started on July 01, 2013 for a month to month tenancy. The tenant testifies that she was subletting a room in this rental unit from the tenant who effectively became her landlord. Rent was agreed at \$340.00 per month plus \$30.00 a month for utilities. The tenant paid a security deposit of \$175.00 on July 01, 2013.

The tenant testifies that the landlord agreed the tenant could give three weeks' notice to move out of the unit. The tenant provided this on August 12, 2013. The tenant had paid rent and utilities for the remainder of the month of August and therefore should have still had access to the unit until August 31, 2013. The tenant did remove her belongings on August 14, 2013 and the landlord sent the tenant a text message, a copy of which has been provided in the tenants documentary evidence, in which the landlord informed the tenant that she could no longer have access to the unit, the locks had been changed and the unit had been re-rented to another tenant a week ago. The tenant received this text message on August 18, 2013.

The tenant testifies that she requested her security deposit back and the remainder of rent for August, 2013. The landlord refused and the tenant provided a forwarding address in writing to the landlord on November 28, 2013 by registered mail and again by text message. This letter was not collected by the landlord and has been returned to the tenant. The tenant has provided this in evidence.

The tenant seeks to recover double the security deposit and half a month's rent for August, 2013.

Analysis

The landlord did not appear at the hearing to dispute the tenants claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the

landlord, I have carefully considered the tenants documentary evidence and sworn testimony before me.

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing. This was sent by registered mail on November 28, 2013 and was deemed served on December 03, 2013 pursuant to s. 90 of the *Act*. As a result, the landlord had until December 18, 2013, to return the tenant's security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit and has not filed an application for Dispute Resolution to keep the deposit. Therefore, I find that the tenant has established a claim for the return of double the security deposit of **\$350.00** pursuant to section 38(6)(b) of the *Act*.

With regard to the tenants claim to recover half of the rent paid for August, 2013. A tenant is required to provide a landlord with one clear month's written notice to end a tenancy. In this case the tenant has testified that she only gave three weeks' notice however the landlord changed the locks and rented the tenant's room to another tenant. I am satisfied from the documentary evidence provided by the tenant that the landlord did change the locks and rent the unit to a new tenant around August 15, 2013. A landlord is not entitled to charge rent twice for the same unit and therefore as the landlord was able to mitigate the loss in rent by re-renting the unit just after the tenant actually moved out, the tenant is entitled to recover the balance of rent and utilities paid for August, 2013 of **\$185.00** pursuant to s. 67 of the *Act*.

As the tenant has been successful with this claim the tenant is entitled to recover the **\$50.00** filing fee pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$585.00**. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced through the Provincial Court 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: February 17, 2014

Residential Tenancy Branch

