



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNSD, OLC

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were dealt with together.

The tenant's application is a request for a Monetary Order for \$1750.00 and a request for recovery of the \$50.00 filing fee.

The landlord's application is a request for a Monetary Order for \$2794.50 and a request for recovery of the \$50.00 filing fee.

The hearing was originally scheduled for January 9, 2013, however it was subsequently rescheduled to March 4, 2013 and all parties were made aware of the new date and time.

Although I waited until well past the time at which the hearing was to start, the applicant/landlord did not join the conference call that was set up for the hearing.

Some documentary evidence, photo evidence, and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the tenant the opportunity to give evidence orally.

All testimony was taken under affirmation.

Issue(s) to be Decided

Landlord's application

Since the landlord did not appear at today's hearing landlord's application will be dismissed.

Tenant's application

Has the tenant established a monetary claim in the amount of \$1750.00?

Background and Evidence

The tenant testified that:

- He suffered significant harassment from the landlord in the month of September 2013.
- On September 1 the landlord gave him a letter stating that he had to move out by noon on September 30, 2013 and in that letter she remove my privileges for the use of the backyard for the month of September 2013 and falsely accuse me of harming her dog.
- I therefore assumed that I had to move out on September 30, 2013 and did not find out until later that this was not a valid form of a Notice to End Tenancy.
- He and his guests were both harassed by the landlord throughout the final month of the tenancy.
- On September 5, 2013 my guest was repeatedly harassed by the landlord and the landlord demanded \$40.00 from my guest for staying in the rental property. This harassment was even repeated by text messages to my guest.
- September 12, 2013 the landlord took down my hammock which had always been the backyard and left it in a mess by the back gate. When I re-hung it, I was harassed by the landlord and another tenant and told to take it back down and vacate the backyard, which I had been using for the previous five months.
- On September 26, 2013 I was awoken by the landlord banging repeatedly on my door and yelling when I answered the door she gave me a notice of Final Opportunity to Schedule a Condition Inspection, however she had never offered a first opportunity.
- An inspection was done on move out, however the landlord had never done a move in inspection report when he moved in.

- Due to all the harassment, he is requesting the return of his full September 2013 rent of \$675.00.
- He is also requesting the return of his security deposit as the rental unit was left in good condition and with no damages, and he is also requesting that the landlord be required to pay double the security deposit, as the landlord failed to comply with the requirement to do a move in inspection, and failed to comply with the requirement of two opportunities to do a move out inspection.
- He is also requesting \$400.00 in lost income for the time he had to spend preparing for and attending this hearing.

Therefore the total amount of the claim he is requesting is as follows:

Return of September 2013 rent	\$675.00
Return of full damage deposit	\$337.50
Lost employment income	\$400.00
Doubling of security deposit	\$337.50
Filing fee	\$50.00
Total	\$1800.00

Analysis

Although the tenant did have some unreasonable interference from the landlord in the final month of his tenancy, it is my finding that he did not have a significant loss of use of the rental unit/property, and therefore I will not allow the claim for return of the September 2013 rent.

I also deny the request for lost employment income, as time spent preparing for and attending a dispute resolution hearing is a cost of the dispute resolution process and I have no authority to award costs other than the filing fee.

I will however allow the claim for double the \$337.50 security deposit.

Under Section 23 of the Residential Tenancy Act the landlord is required to do a move in inspection report at the beginning of the tenancy and in this case landlord failed to do so.

Section 24(2) of the Residential Tenancy Act states:

24(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) *[2 opportunities for inspection]*,
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Further Section 38 of the Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit and the landlords right to claim against the security deposit had been extinguished.

This tenancy ended on September 30, 2013 and the tenant gave sworn testimony that he gave the landlord a forwarding address in writing, by hand, on September 30, 2013, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore, since the landlords right to claim against the security deposit had been extinguished, the landlord was required to return the security deposit to the tenant by October 15, 2013, and having failed to do so the landlord must now pay double the amount of the security deposit to the tenant.

The tenant paid a security deposit of \$337.50, and therefore the landlord must pay \$675.00.

I also allow the request for recovery of the \$50.00 filing fee.

Conclusion

I have allowed \$725.00 of the tenants claim, and I have therefore issued an order for the landlord to pay that amount to the tenant. The remainder of the tenants claim is dismissed without leave to reapply.

The landlord's full claim is dismissed without leave to reapply.

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: March 04, 2014

Residential Tenancy Branch

