



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application filed by the Tenant for a monetary order for money owed or compensation for damage or loss, for the return of double the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Landlord confirmed receipt of the Tenant's notice of hearing package and the submitted evidence, but stated that this package was not received by the Landlord until November 21, 2013 which prevented them from adequately filing evidence to dispute the Tenant's claims. The Tenant disputes this stating that the notice of hearing package was delivered to the Landlord by posting it to Landlord's residence on September 3, 2013 with a witness. The Landlord disputes this stating that the notice and evidence were received on November 21, 2013 at the same time. The Tenant is unable to provide any supporting evidence to support the issue of service. The Landlord requests an adjournment to properly respond to the Tenant's claims. The Tenant disputes the adjournment request. I find that the Tenant has failed to provide sufficient evidence to satisfy me that the Landlord was properly served to enable them to respond to the Tenant's dispute and the submitted documentary evidence. As such, the Landlord's request for an adjournment is granted.

The hearing was reconvened on February 25, 2014 after a rescheduled adjournment from January 31, 2014 and continued with both parties providing testimony.

The Landlord states that an evidence package was submitted on December 16, 2013 to assist in refuting the Tenant's claims. The Tenant disputes that he has not received any documentary evidence from the Landlord. The Landlord states that he has a signed letter from M.P. who is a witness to the service. The Landlord states that because, M.P. was recently out of the country up until a few days before the hearing that he was unable to submit a copy of the letter as proof of service and wishes to submit it for the

hearing. The Tenant objects stating that this is not in keeping with the rules of procedure. I find that the Landlord has a valid reason for submitting the late evidence to support his claim of service of the documentary evidence package in keeping with the rules of procedure and fairness. The Landlord was instructed to provide this letter within 1 hour of the start of the hearing and that the submission of this letter would form part of the decision. The letter was received from the Landlord as specified and will form part of my deliberations for this decision. The letter states that, M.P. was a witness to the Landlord's documentary evidence being delivered to the Tenant on December 16, 2013. The Landlord's documentary evidence is allowed and will apply in forming my decision.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

The Tenant seeks a monetary claim of \$6,677.03 but is limited to the \$5,000.00 limit that was applied for under the Act. The claim consists of \$550.00 for a monetary order obtained from a previous claim, \$1,200.00 for the return of double the security deposit, \$750.00 for recovery of his temporary rental agreement, \$618.70 for restaurant food costs, \$835.35 for the cost of gas for moving, \$857.98 for food costs and \$190.00 for towing.

It was clarified with both parties that the Tenant's first item of claim for \$550.00 was dismissed for "Res Judicata" as this is a claim for a monetary order already awarded to the Tenant in another Residential Tenancy Branch Decision.

The Tenant relies on Residential Tenancy Branch File in his claim for the return of double the security deposit totalling, \$1,200.00, but has failed to provide a copy of which for this hearing and has not provided any specifics of how this would apply to the return of a security deposit of \$600.00. The Landlord disputes this claim stating that no security deposit was collected for the tenancy. I take note that the Landlord also refers to the RTB File in his direct testimony and has provided a copy of which in the body of their documentary evidence. In the decision it was noted that neither party submitted a written tenancy agreement in evidence for that hearing, but that a finding was made by the Arbitrator that a \$600.00 security deposit was collected by the Landlord. The Tenant did not provide any details of when he gave his forwarding address in writing to the Landlord. The Landlord states that until the filing of this application he was unaware of the Tenant's forwarding address.

The Tenant seeks \$750.00 for recovery of costs for a temporary tenancy after he was ordered to vacate the rental unit on September 12, 2011. The Tenant relies on a handwritten receipt for \$750.00 for a "Temp. Rental for September/11". The Tenant also seeks compensation of \$2,775.00 for recovery of a second temporary tenancy after he vacated the rental unit as the first was an interim one. The Tenant relies on a copy of a signed tenancy agreement with a new Landlord, which states a monthly of rent of \$1,850.00 which begins on October 1, 2011. The Landlord disputes this stating that in RTB file an order of possession was granted for March 31, 2011 and that the Tenancy was ended as a result of that order. The Landlord notes that these receipts are well after the tenancy was ended subject to enforcement of an order of possession. The Landlord stated that he delayed in enforcement of the order of possession due to the Tenant's personal situation, but that it was nevertheless enforced legally.

The Tenant seeks recovery of \$618.70 for costs for eating out from September 2, 2011 to the end of October 2011. The Tenant states that he did not have the use of a kitchen and had to eat out all of the time. The Tenant has submitted numerous copies of receipts from various restaurants. The Landlord disputes this stating the tenancy was legally ended and that they are not responsible for the Tenant's costs after the tenancy.

The Tenant seeks \$835.35 in moving costs and related fuel charges. The Landlord disputes this claim stating that moving costs are not their responsibility as the tenancy was ended subject to an order of possession.

The Tenant seeks \$857.98 for food costs incurred while he was living in a temporary tenancy. The Landlord disputes this claim. The Tenant has provided numerous receipts for food including but not limited to groceries, family swimming costs for 2 from 2 separate occasions, a receipt from ICBC with no explanation, various fuel charges, purchases for various auto parts, phone cards, soda pop.

The Tenant seeks recovery of \$190.00 for a towing charge and has provided a copy of a business card from Hamon Towing with a handwritten notation on the reverse stating "towing \$190.00. Oct. 14/11". The Landlord disputes this portion of the claim. The Tenant states that because the tenancy ended he had to move various recreational vehicles that he had on the property to an alternate location.

The Landlord states that he has responded to various applications for dispute filed by the Tenant and wishes to have noted on the file that the Tenant continues to harass the Landlord over issues that the Tenant has incurred after the tenancy was concluded. The Tenant disputes these claims stating that the claims are all relevant to the tenancy.

Analysis

Section 38 of the Residential Tenancy Act speaks to the return of a security deposit. It states:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation

to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

I find based upon direct testimony of both parties that the Tenant has failed to establish a claim for the return of double the security deposit. On a balance of probabilities I find that a security deposit of \$600.00 was collected as noted in the original arbitration on March 17, 2011 on RTB File which remains uncontested as of the date of this hearing. The Tenant has failed to provide sufficient evidence to satisfy me that the Landlord was provided with his forwarding address in writing after the tenancy ended. It is also noted that the Landlord has not since the end of this tenancy filed an application to dispute the return of the security deposit as he states that he did not receive the Tenant's forwarding address in writing until this application was filed and he received the address via this filed application. The Tenant's application for the return of double the security deposit is dismissed. However, the Landlord is ordered to return the original \$600.00 security deposit. The Tenant has established a monetary claim of \$600.00.

I find based upon the evidence provided that the Tenant has failed to establish an entitlement for compensation for the recovery of obtaining temporary tenancies. The Landlord has provided sufficient evidence to satisfy me that the tenancy was ended lawfully as a result of enforcing an order of possession. These portions of the Tenant's application for recovery of costs for temporary tenancies are dismissed.

I find that the Tenant has failed to establish a claim where the Landlord is responsible for costs incurred after vacating the rental property. The Landlord has provided sufficient evidence to satisfy me that the tenancy ended lawfully under the issuance of an order of possession. The Tenant although providing numerous receipts for various

claims, has failed to provide sufficient evidence to satisfy me that these costs were incurred as a result of the Landlord's neglect. The remaining portions of the Tenant's monetary claim are dismissed.

The Tenant has established a total monetary claim of \$600.00. I find that the Tenant having been partially successful in his claim is entitled to recovery of the \$50.00 filing fee. I grant the Tenant a monetary order for \$650.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$650.00.

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: March 18 2013

Residential Tenancy Branch

