



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and to recover the RTB filing fee.

An agent for the tenant attended the teleconference hearing and gave evidence, however the landlord did not attend. The tenant's agent gave evidence that the landlord was served with the Notice of a Dispute Resolution Hearing and Tenant's Application for Dispute Resolution by registered mail on February 4, 2014. I find the landlord was properly served.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The tenant's agent gave evidence that the tenant and his roommate moved into the rental unit in July 2013 and paid a security deposit of \$400.00. The tenant's agent was not certain how much rent the tenants were obligated to pay, however the tenant's bank statement indicates monthly withdrawals of about \$400.00 for the tenant's share of the rent. The tenant's agent was also not certain which day of the month the rent was due.

The tenant's agent gave evidence that a pipe burst one night in October 2013 at about 3 a.m. and flooded the rental unit. His evidence is that the landlord asked the tenants to vacate the rental unit the next day. The tenant's agent did not know the date of the flood, but the last withdrawal of about \$400.00 from the tenant's bank account was on

October 23, 2013 and the tenant's agent therefore believes the flood took place after that date.

The tenant's agent gave evidence that the tenant and his roommate found another place to live a day or so after they vacated the rental unit.

The tenant's agent does not think the tenant gave the landlord his forwarding address in writing prior to this application. However the tenant and his parents spoke to the landlord regarding the security deposit on four occasions after the tenant moved out of the rental unit. On each occasion, the landlord refused to address the issue of the security deposit. The tenant's agent gave evidence is that he had had prior conversations with the landlord in English, however the landlord refused to converse in English regarding the security deposit.

The tenant claims the return of his security deposit and also compensation for having to vacate the rental unit before the end of a rental period when he had fully paid for the rental period. The tenant's agent gave evidence that various personal belongings of the tenants were destroyed by the flood.

Analysis

The process for the return of security deposits is set out in Section 38 of the Act. Pursuant to Section 38(1), the landlord must either repay the security deposit or apply for dispute resolution to make a claim against the security deposit within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing (whichever is later). Alternatively, pursuant to Section 38(4)(a), a landlord may retain all or part of a security deposit if the tenant agrees in writing.

Based on the evidence of the tenant's agent that the flood occurred in October 2013 after October 23rd, I find the tenancy ended on October 31, 2013. The tenant provided his forwarding address in writing to the landlord when he served this Application for Dispute Resolution. The tenant's Application for Dispute Resolution was served by registered mail on February 4, 2014, and Section 90 provides that documents served in this manner are deemed to be received five days later. I find the landlord received the tenant's documents, including his forwarding address, on February 9, 2014.

The landlord did not return the security deposit or apply for dispute resolution to make a claim against the security deposit within 15 days of February 9, 2014. Also, the tenant did not agree in writing to the retention of any part of the security deposit. The landlord is therefore obligated to return the entire security deposit to the tenant.

According to Section 38(6), a landlord who fails to follow the process set out in Section 38(1) must pay the tenant double the amount of the security deposit. I find the landlord did not follow the process set out in Section 38(1), and he is therefore obligated to pay the tenant double the amount of the security deposit, which is \$800.00.

Since the tenant's agent did not know with certainty the rental period or the total amount of rent, I am unable to consider the tenant's claim for compensation for having had to move out prior to the end of a rental period for which rent had been fully paid.

Since the tenant has been partially successful in this application, the tenant is entitled to recover his RTB filing fee of \$50.00 from the landlord. I grant the tenant an order under Section 67 for \$850.00. This order may be filed in Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order for \$850.00.

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: May 12, 2014

Residential Tenancy Branch

