



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, MND, MNDC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). Landlord BM (the landlord) applied for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant identified both landlords as Respondents in his application for:

- authorization to obtain a return of double his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord confirmed that both landlords named as Respondents in the tenant's application received copies of the tenant's dispute resolution hearing package sent to them by registered mail on April 26, 2014. She also confirmed that she was acting for the other landlord, who was her agent at some points during this tenancy. The tenant confirmed that on May 15, 2014, he received a copy of the landlord's dispute resolution hearing package sent by registered mail on May 13, 2014. I am satisfied that the parties served one another with their hearing packages and their written evidence packages in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage or losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the tenant entitled to a

monetary award equivalent to double the value of his security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*? Are either of the parties entitled to recover their filing fees from one another?

Background and Evidence

This tenancy began on June 1, 2010 as a one-year fixed term tenancy. At the end of the initial term of this tenancy, the tenancy continued as a periodic tenancy. Monthly rent was initially \$1,300.00, but by the end of this tenancy was \$1,325.00, payable in advance on the first of each month. The tenant paid a \$650.00 security deposit on May 29, 2010. The landlord currently retains \$290.00 of that deposit after sending the tenant a cheque for \$360.00 in mid-May 2014. The tenant testified that he has not attempted to cash this cheque, although he continues to hold it.

The tenant's application for a monetary award of \$1,300.00 sought the return of double his security deposit due to the landlord's alleged failure to abide by the provisions of section 38 of the *Act* with respect to his security deposit. Since the tenant filed his application for dispute resolution, the tenant agreed that the landlord has returned \$360.00 from his \$650.00 security deposit. The tenant's requested monetary award is thus reduced from \$1,300.00 to \$940.00, plus his \$50.00 filing fee.

The landlord's amended application for a monetary award of \$8,340.00 requested the issuance of a monetary award for the following items:

Item	Amount
Damage to Carpet	\$290.00
Loss in Value of Rental Unit at Time of Sale due to Damage Arising from Tenancy	8,000.00
Recovery of Landlord's Filing Fee	50.00
Total of Above Items	\$8,340.00

Although the filing fee for a monetary award in excess of \$5,000.00 is set at \$100.00, there is no indication that the landlord paid anything beyond the \$50.00 paid when the original application was filed with the Residential Tenancy Branch (the RTB).

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the

hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to resolve the issues in dispute in this tenancy under the following final and binding terms:

1. The tenant committed to mail the landlord a negotiable cheque in the amount of \$35.00 by 5:00 p.m. on August 15, 2014.
2. Both parties agreed that the tenant is allowed to cash the landlord's cheque in the amount of \$360.00.
3. Both parties agreed that the monetary terms as outlined above constituted a final and binding resolution of all issues arising out of their applications and this tenancy.

Conclusion

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the amount of \$35.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant does not abide by the terms of the above settlement. The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: August 14, 2014

Residential Tenancy Branch

