



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 as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for a monetary order for double the remaining portion of his security deposit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, specifically utilities the tenant allegedly paid for other tenants of \$241.43, and postage fees of \$17.00.

The tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the tenant presented their evidence. A summary of their testimony is provided below and includes only that which is relevant to the hearing.

As the landlord and agent for the landlord (the "agent") did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence was considered. The tenant testified that the Notice of Hearing, Application and documentary evidence was served on the landlord and "agent" by registered mail on February 28, 2014. The tenant provided two registered mail tracking numbers as evidence and confirmed during the hearing that according to the online Canada Post registered mail tracking website, the landlord signed for and accepted his registered mail package on March 3, 2014, whereas, the "agent" information was no longer showing in the website. Based on the information before me and the online registered mail tracking information, I accept the landlord was served on March 3, 2014, when he signed for and accepted the registered mail package. I deem the agent served on March 5, 2014, which is five days after the registered mail package was mailed, pursuant to section 90 of the *Act*, which states that documents are deemed served five days after they are mailed.

Issues to be Decided

- Is the tenant entitled to the return of double the remaining portion of his security deposit under the *Act*?
- Is the tenant entitled to other compensation under the *Act*, as claimed?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenant testified that a written periodic, month to month tenancy agreement began on September 15, 2010 and ended on February 29, 2012, when the tenant vacated the rental unit. Monthly rent in the amount of \$2,000.00 was due on the first day of each month. A security deposit of \$1,000.00 was paid by the tenant at the start of the tenancy.

The tenant stated that he provided his written forwarding address on March 1, 2012 on a piece of paper to the landlord when he returned his keys. The tenant stated that he was issued and cashed a cheque from the landlord in the amount of \$800.00, for the return of all but \$200.00 of his security deposit, which was dated March 6, 2012, a copy of which was submitted in evidence. The tenant stated that he did not give the landlord permission or agree in writing for the landlord to retain any portion of his \$1,000.00 security deposit. The tenant is seeking the return of double the \$200.00 portion of his security deposit that was not returned to him by the landlord.

The tenant also stated that he is seeking \$241.43 for reimbursement for hydro and gas utilities paid by the tenant, that were not paid by other renters living elsewhere in the home. The tenancy agreement submitted in evidence indicates that electricity and heat were not included in the tenancy agreement. The tenant provided utility receipts in evidence.

The tenant is also seeking reimbursement for \$17.00 for postage costs relating to filing his application for dispute resolution. The tenant did not submit a receipt in support of this portion of his claim.

Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Tenant's claim for the return of double the remaining \$200.00 portion of his security deposit– I accept that the tenancy ended on February 29, 2012 based on the undisputed testimony of the tenant. Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

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.

(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.

[my emphasis added]

In the matter before me, **I find** that the landlord did not repay the full security deposit by retaining \$200.00 without written permission of the tenant, or making an application for dispute resolution claiming against the \$200.00 portion of the tenant's security deposit retained by the landlord. Given the above, **I find** the landlord breached section 38 of the *Act* by failing to return the tenant's security deposit in full to the tenant within 15 days of receiving the forwarding address of the tenants in writing on March 1, 2012, having not made a claim towards the security deposit, or portion thereof. Therefore, **I find** the tenant has met the burden of proof and is entitled to the return of double the remaining balance of the security deposit of \$200.00 not returned to the tenant, for a total of **\$400.00**. I note that the security deposit has accrued no interest since the start of the tenancy.

Tenant's claim for utilities – As the tenancy agreement does not include hydro or gas utilities, I find the tenant has failed to prove part one of the four-part test for damages or loss described above. The landlord was not required to pay the tenant's electricity and heating utilities (hydro and gas), and as a result, the tenant does not have a right to claim against the landlord for payments that he allegedly did not receive from others. As a result, **I dismiss** this portion of the tenant's claim due to insufficient evidence, **without leave to reapply**.

Tenant's claim for postage costs – **I dismiss** this portion of the tenant's claim for two reasons. Firstly, there is no remedy under the *Act* for the recovery of postage costs relating to filing an application for dispute resolution, and although filing for the recovery of filing fee is provided for under the *Act*, I note the tenant's filing fee was already waived. As a result, the tenant is not entitled to recover a filing fee, as no such fee was paid for the application before me. Secondly, the tenant failed to provide a receipt proving the \$17.00 amount being claimed, and as a result, I find the tenant failed to prove part three of the four-part test described above, due to insufficient evidence.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **\$400.00**, comprised of the remaining \$200.00 portion of the tenant's security deposit that was not returned to the tenant and retained by the landlord contrary to section 38 of the *Act*, which has been doubled under the *Act* to \$400.00. **I grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$400.00**.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant has established a total monetary claim of \$400.00 comprised of the return of double his remaining security deposit of \$200.00 for a total of \$400.00.

The tenant has been granted a monetary order under section 67 in the amount of \$400.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 11, 2014

Residential Tenancy Branch

