



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 dealt with an application by the tenant for a monetary order for the return of his security deposit and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence. The landlord was assisted by her son.

Issue(s) to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agree the tenancy began June 1, 2011 and ended May 30, 2012. The tenant was obligated to pay rent of \$1,450.00 monthly in advance on the first day of the month. The tenant also paid a security deposit of \$725.00.

The tenant claims he did not receive his security deposit back from the landlord. He also claims \$1,000.00 for damage to his laptop.

The tenant gave evidence he provided his forwarding address to the landlord in writing on June 11, 2012. He provided a copy of an email he sent to the landlord on that date with his forwarding address and the landlord's same day email response. The landlord's son confirms that the email address is the landlord's correct email address.

The tenant gave evidence the rental suite is on the top floor of the building. There was a water leak in the ceiling and water dripped from a ceiling light fixture on to his laptop. The tenant says the laptop stopped working, but it was not cost-effective to repair it so

he stopped using it. He says he told the landlord about his laptop. She told him she was going to make an insurance claim but he did not hear from her again.

The landlord disputes receiving the tenant's email with his forwarding address. The landlord's evidence is that they tried to contact him for two years. The landlord agrees there was a ceiling leak and the tenant complained his laptop had gotten wet. The landlord says they told the tenant to speak to the strata corporation because the roof is the strata corporation's responsibility.

The landlord says they have various monetary claims against the tenant. However, I am unable to consider those claims because the landlord did not file their own Application for Dispute Resolution.

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.

In this case, I find the tenancy ended on May 30, 2012 and the tenant provided his forwarding address to the landlord in writing on June 11, 2012. I accept the documentary evidence the tenant provided which indicates the tenant emailed the address to the landlord and the landlord received the address. The landlord did not apply for dispute resolution to make a claim against the security deposit within 15 days. 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 Section 38(1) must pay the tenant double the amount of the security deposit. In this case, the landlord failed to repay the tenant the amount of \$725.00 from the security deposit. The tenant is therefore entitled to an order for twice that amount, which is \$1,450.00. The tenant is also entitled to recover his RTB filing fee of \$50.00 from the landlord.

I grant the tenant an order under Section 67 for \$1,500.00. This order may be filed in Small Claims Court and enforced as an order of that Court.

Regarding the laptop, I find there is no evidence of wrongdoing or negligence on the landlord's part that led to the tenant's laptop becoming damaged. For that reason, the landlord is not responsible to pay to replace the laptop.

I was not able to consider any claims of the landlord against the tenant, and I advised the landlord that it was too late for the landlord to file a claim. Pursuant to Section 60, an application for dispute resolution must be made within two years of the date the tenancy ended.

According to Section 60(3): "If an application for dispute resolution is made by the landlord or tenant within the applicable limitation period under the Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded."

In this case, the tenant filed his application one day before the two-year limitation period expired. The landlord could have filed their own application, pursuant to Section 60(3) above, anytime up until the hearing of the tenant's application was concluded. However, once the hearing was underway and when it was clear the hearing would be concluded shortly, I advised the landlord it was then too late for the landlord to file their own claim.

Conclusion

I grant the tenant a monetary order for \$1,500.00.

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: October 06, 2014

Residential Tenancy Branch

