



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 the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of double her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord 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 the tenant handed him a copy of her dispute resolution hearing package on or about May 15, 2014. I am satisfied that the tenant served her hearing package to the landlord in accordance with the *Act*.

The landlord testified that he sent the tenant a copy of his written and photographic evidence by registered mail on August 27, 2014. He provided the Canada Post Tracking Number to confirm his mailing. The tenant said that she had not received the landlord's evidence, but noted that she moved on September 1, 2014, and may not have received notice from Canada Post at her new address. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's written and photographic evidence on September 2, 2014, the fifth business day after its registered mailing.

Issues(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

On or about November 11, 2011, the parties signed a one year fixed term Residential Tenancy Agreement for a tenancy that commenced on December 1, 2011. After the expiration of the initial term, the tenancy converted to a periodic tenancy. Monthly rent was set at \$1,225.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$612.50 security deposit paid on November 11, 2011.

The tenant testified that sometime in December 2013, she gave the landlord verbal notice that she intended to end her tenancy by March 1, 2014. Although the landlord did not think that this occurred in December 2013, he testified that he had more than a month's verbal notice from the tenant that she was planning to end her tenancy by March 1, 2014. The landlord maintained that the tenant did not vacate the rental unit until at least March 7, 2014, and did not yield vacant possession of the premises until later in March 2014.

The tenant gave undisputed sworn testimony and written evidence that she provided the landlord with her forwarding address in writing on April 8, 2014. The landlord confirmed receiving this address from the tenant on or about that date. Within 15 days of receiving the tenant's forwarding address, the landlord did not file for dispute resolution nor did he return any portion of the tenant's security deposit.

The tenant applied for a monetary award of \$1,200.00, as she maintained that the landlord had not complied with the provisions of section 38 of the *Act* in which he was required to take action to either return her deposit or apply for authorization to retain it within 15 days of his receipt of her forwarding address.

In the landlord's written evidence, he maintained that he had incurred losses and damage totalling \$2,257.02 stemming from this tenancy. He confirmed that he had not applied for dispute resolution to seek the recovery of his losses.

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. They agreed to settle all of the issues in dispute between them on the following terms.

1. The landlord committed to give the tenant a negotiable cheque in the amount of \$800.00 on September 15, 2014, the day of this hearing.

2. Both parties agreed that the monetary terms of this agreement as outlined above constituted a final and binding resolution of all issues arising out of this tenancy and furthermore agreed that they will not commence any new initiatives of any type to obtain a monetary award from one another.

Conclusion

In order to implement the above settlement reached between the parties, I issue a monetary Order in the tenant's favour in the amount of \$800.00. I deliver this Order to the tenant in support of the above agreement for use **only** in the event that the landlord does not abide by the terms of the above settlement. The tenant is provided with these Orders in the above terms and the landlord 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 landlord 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: September 15, 2014

Residential Tenancy Branch

