



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of the security deposit – Section 38;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The following are undisputed facts: the tenancy started on November 1, 2013 on a fixed term to November 1, 2014. Rent of \$650.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$325.00 as a security deposit. In an email dated April 29, 2014 (the “Email”) the Tenant gave notice to end the tenancy for May 31, 2014. The Email notes that the Tenant is “prepared to leave” his damage deposit with the Landlord. The Email also sets out that although the Tenant paid for May 2014 rent the Landlord is welcome to keep the rent payment and to rent out the unit as soon as the following week in lieu of the Tenant breaking the fixed term lease. The Email indicates that the Tenant will keep the Landlord posted about the final cleaning of the unit and when the key can be returned. The Tenant was not living

in the unit at the time. On May 3, 2014 the Landlord changed the locks to the unit and found another tenant to move into the unit in early May 2014. The Tenant was not able to obtain his left over belongings until May 7, 2014. The Tenant provided his forwarding address to the Landlord on May 9, June 10 and July 28, 2014. No application for dispute resolution was made by the Landlord and the security deposit was not returned to the Tenant.

The Tenant submits that the Landlord arbitrarily changed the locks without right and without further communication with the Tenant as was expected. The Tenant claims return of the security deposit and return of May 2014 rent.

The Landlord states that he relied on the Email to keep and not return either the security deposit or any of May 2014 rent. The Landlord states that the new tenants were not charged for May 2014 rent and that the new tenants were good previous tenants that the Landlord wanted to bring back. The Landlord states that the Tenant was no longer living in the unit when the Landlord changed the locks and that the Tenant did not leave the unit in the same condition as was provided and that the Landlord's wife had to clean the unit for the new tenants.

Analysis

Section 38 of the Act provides that a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. As the Email offering the security deposit was sent to the Landlord prior to the end of the tenancy, and considering that this offer was not reduced to an agreement in writing at the end of the tenancy, I find that the Landlord had no right to retain the security deposit on the basis of the Email.

Section 38 further provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution

claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Accepting the Tenant's supported and credible evidence in relation to the provision of the forwarding address, I find that the Landlord received the Tenant's forwarding address and failed to either return the security deposit or claim against the deposit within the time allowed. I find therefore that the Landlord must return double the security deposit plus zero interest to the Tenant in the amount of **\$650.00**.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the loss claimed was caused by the actions of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the Email, it is clear that the Tenant offered to let the Landlord keep the Tenant's last month of rent regardless of when the Landlord was able to rent the unit in May 2014 in lieu of any damages arising from the ending of the fixed term. It is also clear that the Landlord accepted this offer by obtaining a new tenant very quickly. The Tenant could not have been caught by surprise over the rental retention by the Landlord or the re-renting of the unit in early May 2014. However, given the Landlord's highhanded actions in arbitrarily changing the locks on May 3, 2014, I find that the Tenant did experience a loss of use of the unit before reasonably expected. As the Tenant provided no evidence of any costs associated with this loss, but considering the significant breach of the Tenant's right to privacy, I find that the Tenant is entitled to nominal compensation of **\$200.00**. Given the Landlord's actions in not allowing the Tenant access to the unit, I also find that the Tenant was relieved of any obligation to leave the unit as required under the Act and that the Landlord is not at liberty to make any claim in relation to damages to the unit.

As the Tenant's application has been found to have merit, I find that the Tenant is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$900.00**.

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Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$900.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order 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: March 19, 2015

Residential Tenancy Branch

