



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD OLC FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67 for rental loss and other compensation for costs incurred due to the tenant's breach of agreement;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) For a return of twice the security deposit pursuant to section 38; and
- e) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and each confirmed receipt of each other's Application for Dispute Resolution. The landlord served her Application by registered mail. However, the landlord claimed she was not legally served with the tenant's Application and never received his forwarding address in writing until she saw his Application for Dispute Resolution.

Preliminary Issue of Service:

The tenant said he sent his Application for Dispute Resolution by regular mail. I find this is not legal service according to section 89(1) of the Act. When I explained this to the tenant, he contended he had not been advised correctly by the office. However, I find section 89 is part of the Act and the tenant is presumed to know the law.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there was a tenancy agreement and the tenant breached it causing rental loss and other costs to her? If so,

what is the amount of the compensation and is the landlord entitled to recover filing fees also?

Is the tenant entitled to twice the security deposit refunded and to recover filing fees for the application?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenant viewed the unit on November 2, 2014 and agreed with the landlord to take it at a rental of \$925 a month. He said it was a decent place and there was not a lot available with 2 bedrooms at that price point. He said he told the landlord he liked it and 'jumped on it' by going out to the bank and paying \$462 cash for a security deposit the same day. The landlord said she had hoped to rent it for November, but agreed to November 15, 2014 as the move-in date because the tenant said he needed it badly; she turned away two other parties.

The tenant said he was later presented with another option where relatives would be living upstairs and would help with his two year old daughter so he called the landlord about a week or 8 days later and told her; he said he was thinking of his daughter's welfare. He said he provided his forwarding address in writing on December 7, 2014 by putting it in the landlord's mailbox but the landlord and her relative witness said she never received that letter and only found out the tenant's forwarding address when he provided a copy of the letter with his evidence. She then filed her Application.

The landlord said the tenant told her on November 12, 2014 that he did not want to rent the unit so she tried to re-rent and was successful in obtaining tenants for December 1, 2014. The landlord claims compensation of two months rent plus \$980 for her relative's loss of work and \$200 for her loss of work due to the filing of this Application.

In evidence is the receipt for the security deposit, a handwritten letter with the tenant's forwarding address dated December 7, 2014 and copies of registered mail receipts for the landlord's Application.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

The onus is on the applicant to prove on a balance of probabilities their claim. At issue is whether a tenancy existed between the parties. Section 1 of the Act provides that a tenancy means an agreement, whether written or oral, between a landlord and tenant

respecting possession of a rental unit. I find as fact that the landlord and tenant in this case agreed to possession of the rental unit at an agreed rent and the tenant paid a deposit to secure the unit. I find there was a tenancy created by this agreement.

Section 7 of the Act provides that if a landlord or tenant does not comply with the Act or their tenancy agreement, the landlord or tenant must compensate the other for damages or loss that results. I find the tenant did not comply with his agreement to move into the rental unit and pay rent as of November 15, 2014. I find insufficient evidence to support the landlord's contention that he had agreed to rent it for all of November as he had not looked at it until November 2, 2014. I find it credible that on negotiation he agreed to rent as of November 15, 2014 although he did not need it until December 1, 2014 because he needed the place badly. The credibility is further supported by the fact that on the landlord's receipt for the security deposit, it states that a half of one month's rent is due before occupancy on November 15, 2014.

Section 7(2) of the Act provides a party who claims compensation from the other must do whatever is reasonable to mitigate the loss. I find the landlord mitigated her loss by re-renting for December 1, 2014. Therefore, I find she lost only one half of one month's rent or \$462.50. Respecting her other claims, as advised in the hearing, the Act provides for a filing fee of \$50 for the filing of the Application but does not provide for a party's compensation for time to do it. Therefore, I find the landlord not entitled to recover compensation for loss of work for that time.

On the tenant's application, the onus is on him to prove on the balance of probabilities that twice the security deposit should be refunded in accordance with section 38 of the Act. I find the tenant informed the landlord of his intention not to rent about November 10-12th, 2014 but I find insufficient evidence that he served the landlord with his forwarding address in writing as provided in section 38 of the Act. Furthermore, I find he served the landlord by regular mail with his Application which is not an authorized means of service according to section 89(1) of the Act. Therefore, I dismiss the tenant's application for the refund of double his security deposit.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply.

I find the landlord entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing:

Calculation of Monetary Award:

One half of one month's rent (Nov. 15-30)	462.50
Filing fee	50.00
Less security deposit (no interest 2014)	-462.00
Total Monetary Order to landlord	50.50

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: April 01, 2015

Residential Tenancy Branch

