



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. In the Tenant's Application for Dispute Resolution he sought a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement, return of double the security deposit paid to the Landlord and for the return of the filing fee for the Application. The Landlord sought a Monetary Order for unpaid rent, compensation for damage or loss under the Act, regulation or tenancy agreement, an Order permitting the Landlord to retain the security deposit and for the return of the filing fee for the Application

Only the Tenant appeared at the hearing. The Tenant provided affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord made a cross application, which was set to be heard at the same time as the Tenant's application and was therefore informed of the date of the hearing.

The Tenant also testified that he served the Landlord with the Notice of Hearing. As the Landlord failed to attend, his application is dismissed without leave to reapply.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

1. Has there been a breach of Section 38 of the Act by the Landlord entitling the Tenant to return of double the security deposit?
2. Is the Tenant entitled to monetary compensation for damage or loss under the Act, regulations or tenancy agreement?

3. Should the Tenant be entitled to recovery of the fee they paid to file their application?

Background and Evidence

Introduced in evidence was a copy of a residential tenancy agreement, dated July 14, 2014, which indicated the 1 year fixed term tenancy began July 28, 2014 ending on July 28, 2015. The monthly rent was indicated as \$2,200.00, however, the agreement did not specify what day of the month rent was payable.

The agreement further specified that the Tenant paid the Landlord a security deposit of \$1,100.00; again, no date was provided as to when this payment was made.

The Tenant testified that he asked to terminate the tenancy due to excessive noise caused by the Landlord's former spouse, who was also occupying the rental building. Apparently she operated a dog walking business which caused excessive noise and disrupted the Tenant. He says that the Landlord agreed to this request to end the tenancy before the conclusion of the fixed term. The Tenants vacated the premises on September 30, 2014 pursuant to a mutual agreement to end the tenancy.

The Tenant testified that the Landlord did not perform an incoming or outgoing condition inspection report.

The Tenant testified that he provided the Landlord with a written notice of the forwarding address to return the security deposit to, by sending it regular mail to the Landlord as well as by text message on or about October 10, 2014. He confirmed that he did not sign over a portion of the security deposit.

While the Landlord applied for an Order to retain the security deposit on October 18, 2014, he did not attend the hearing.

The Tenant testified that although he moved from the rental unit at the end of September 2014, and the Landlord re-rented the rental unit to another occupant for October 1, 2014, the Landlord deposited the Tenant's rent cheque for the month of October.

Introduced in evidence was a copy of a text message from the Landlord to the Tenant, dated September 25, 2014 wherein the Landlord confirmed that he had a new tenant moving into the rental unit on October 1, 2014. Despite this, the Landlord deposited the Tenant's October 2014 rent cheque. Also introduced in evidence was a text message

from the Landlord to the Tenant dated October 4, 2014 wherein the Landlord confirmed he “banked the rent for October”.

Analysis

Based on the above, the undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit.

By failing to perform incoming and outgoing condition inspection reports in accordance with the Act, the Landlord extinguished his right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies. Therefore, I find the Landlord has breached section 38 of the Act.

The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the Landlord and the Tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

It is not enough that the Landlord feel they are entitled to keep the deposit, based on unproven claims. The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$2,200.00** , comprised of double the security deposit (2 x \$1,100.00).

I also accept the Tenant's undisputed testimony that the Landlord cashed his October 2014 cheque after the Tenant vacated the rental unit, and did so without the consent of the Tenant. As the tenancy had ended by mutual agreement, the Landlord had no right

to deposit the Tenant's rental cheque for October 2014, and accordingly, I order, pursuant to section 67, that the Landlord pay to the Tenant the sum of **\$2,200.00**.

The Tenant, having been substantially successful, is also awarded the \$50.00 fee for filing this Application.

Based on the foregoing, I find that the Tenant is entitled to a Monetary Order in the total amount of **\$4,450.00**. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Tenant is given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as 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: April 9, 2015

Residential Tenancy Branch

