



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for money owed or compensation for loss under the Act;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary matter

At the outset of the hearing the landlord requested an adjournment because a drain overflowed in the morning and water was all over the place. The landlord stated that the plumber has attended to fix the problem; however, he has not had enough rest, cannot clearly think, and is physically tired.

The tenant objected to an adjournment. The tenant indicated that the landlord's application has no merit, as it was previously heard and dismissed on September 24, 2014. The tenant stated that the landlord has had her security deposit, pet damage deposit and key deposit (The "Deposits") for 7 months and any further delay is unfair and prejudicial to her.

I have reviewed the landlord's application for a monetary order and written in the details of dispute are,

"Term of lease expired July 31, 2014. Tenant over hold until September 30/14. Had cash offer to purchase my condo with vacant possession for August 15/14. Because of over hold the sales could not complete. As a result I suffer financial loss. My mortgage + strata fees would have been paid. Seeking for \$2,624.78 or Oct mortgage payment + \$493.06

for Oct strata payment for a total of \$3,117.84 plus \$50 for lining , are the same issues that were and the issues identified in their application were heard on September 24, 2014.”

[Reproduced as written]

The decision date September 24, 2014, reads in part,

“The landlord claimed a monetary award for damages resulting from the tenant’s over holding, but the landlord did not issue a valid Notice to End Tenancy Notice to End Tenancy and I find that the tenancy agreement was ambiguous and ineffective in ending the tenancy as of July 31, 2014. Rent has been paid for the month of September and the tenant has agreed that the tenancy will end of September 30th. **I therefore deny the landlord’s claim for a monetary award.** The landlord claimed late fees of \$30.00 per month; they exceed the \$25.00 amount permitted by the Residential Tenancy Regulation and the claim for late fees is denied.”

[Reproduced as written]

[My emphasis added]

I find that due to the legal principal of Res judicata, I cannot hear the issue identified in the landlord application for monetary compensation as the issue was heard and a decision rendered on September 24, 2014. Therefore, I decline to hear the landlord application due to the principal of Res judicata.

Although I accept the landlord may have had to deal with an issue of an overflowed drain earlier today. However, I find being physically or emotionally tired is not grounds to delay the hearing.

Further, as I have decline to hear the landlord’s application for monetary compensation due to the principals of Res judicata and the landlord has not identified any other issues in their application claiming against the Deposits, such as unpaid rent. I find any further delay would be unreasonable, unfair and prejudicial to the tenant as the Deposits are held in trust by the landlord for the tenant and at no time can the landlord keep it because they feel they are entitled to it or are justified to keep it.

In this case, the landlord has retained the tenant’s Deposits for approximately 8 months after the tenancy has ended. Therefore, the landlord’s request for an adjournment is denied.

Issue to be Decided

Is the tenant entitled to the return of all or part of the security deposit and pet damage deposit?

Background and Evidence

The tenancy began on August 1, 2013. Rent in the amount of \$2,975.00 was payable on the first of each month. A security deposit of \$1,487.50, a pet deposit of \$1,487.50 and a key deposit of \$200.00 were paid by the tenant.

The tenant testified that on September 30, 2014, the parties completed a move-out condition inspection report and on the move-out condition inspection report she provided the landlord with her forwarding address.

The tenant testified that she wrote the address of the rental unit on the form, as she had her mailed forwarded to her new location by Canada post. The tenant stated that she did not want the landlord to know of her new location.

The tenant testified that although the landlord filed an application to keep the Deposits within 15 days, this simply is an attempt not to return the Deposits, as the issue they listed in their application had been heard and dismissed before the tenancy ended. The tenant stated that there was no rent owed, no damages to the property and all keys were returned at the end of the tenancy.

The landlord testified that the tenant did not provide a forwarding address at the end of the tenancy as she provided the rental unit number. The landlord stated that Canada post was not forwarding her mail.

The landlord testified that he is tried and cannot present his evidence.

Analysis

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

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must do one of the following:**

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

Although I accept the landlord filed an application within 15 days claiming against the Deposits. I find landlord was not entitled to file a new application for a matter that had been previously heard and dismissed. Further, the landlord's application did not make any additional claims against the Deposits, and the evidence supports that no rent was outstanding, no damages were found in the rental unit, and all keys were returned at the end of the tenancy. Therefore, I accept the tenant's evidence that the landlord is simply attempting not to return the Deposits.

Therefore, I find the landlord was obligated to return the Deposits to the tenant within 15 days, to the address provided by the tenant at the end of the tenancy, even if they do not agree with

the forwarding address provided, as the landlord had no lawful reason to claim against the Deposits.

Although section 38(6) would not normally applied when a landlord filed a claim against the Deposits within the statutory time limit; however, in the case, I find section 38(6) applies as there was no merit to the landlord's application. I find the landlord is deliberately attempting to avoid his obligations under section 38 of the Act.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenant the sum of **\$6,250.00**, comprised of double the pet damage deposit (\$1,487.50) and security deposit (\$1,487.50) on the original amounts held, plus the \$200.00 key deposit and the cost to recover the filing of \$100.00.

The tenant is given a formal monetary order pursuant to 67 of the Act, 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.

Conclusion

The landlord's application for a monetary order is dismissed due the principle of Res judicata.

The tenant's application for return of double the Deposits and key deposit is granted. The tenant is granted a monetary order in the above noted amount.

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: May 27, 2015

Residential Tenancy Branch

