



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, O, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation for damage and cleaning; for lost revenue; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord has submitted into evidence a copy of a tenancy agreement signed by the parties on February 18, 2011 for a 1 year and 1 day fixed term tenancy beginning on March 1, 2011 that converted to a month to month tenancy on March 2, 2012 for a monthly rent of \$1,300.00 due on the 1st of each month with a security deposit of \$650.00 paid.

The tenant testified the tenancy ended on July 2, 2014 when he returned the keys to the rental unit and provided his forwarding address by placing them both in the landlord's mailbox. The tenant testified that he has not, at the time of the hearing received his security deposit from the landlord. I note that the landlord's Application included a request to retain the deposit.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear

and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

As the landlord has failed to attend this hearing, that was scheduled as a result of his Application for Dispute Resolution, to present his claim I dismiss the landlord's claim in its entirety without leave to reapply.

Section 38(1) of the *Act* states that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address in writing, either return the security deposit in full less any mutually agreed upon amounts (in writing) or file an Application for Dispute Resolution seeking to claim against the deposit. Section 38(6) states that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the amount of the security deposit.

From the tenant's undisputed testimony I find the tenant provided the landlord with their forwarding address by leaving it in the landlord's mailbox on July 2, 2014. Allowing 3 days, pursuant to Section 90 of the *Act*, I find the landlord is deemed to have received the tenant's forwarding address on July 5, 2014.

As such, I find the landlord had until July 20, 2014 to either return the deposit to the tenant or file his Application for Dispute Resolution to claim against the deposit. As the landlord's Application for Dispute Resolution that is the subject of this decision was filed with the Residential Tenancy Branch on October 8, 2014 or 2 ½ months after he received the forwarding address, I find the landlord failed to comply with Section 38(1) of the *Act* and the tenant is therefore entitled to return of double the amount of the deposit pursuant to Section 38(6).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,300.00** comprised of double the amount of the security deposit paid.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: May 15, 2015

Residential Tenancy Branch

