



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover double the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on October 24, 2014. Canada Post tracking numbers were provided by the tenant in evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover double the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenant testified that this month to month tenancy started on July 31, 2013. The tenant shared this property with a number of other tenants but had his own tenancy agreement with the landlord. Rent for this unit was \$475.00 per month and was due on the 30th of each month in advance. The tenant paid a security deposit of \$237.50 on July 30, 2013. The tenant was evicted from the unit on September 11, 2014.

The tenants testified that the landlord has failed to return the security deposit within 15 days of receiving their forwarding address in writing. The tenant testified that the forwarding address was provided to the landlord on October 06, 2014 by registered mail. The tenant provided the registered mail tracking information in evidence. The tenant testified that the landlord was not given written permission to keep all or part of the security deposit. The tenant seeks to recover double the security deposit to an amount of \$475.00

The tenant testified that the landlord turned off the water to the unit on August 11, 2014. The tenant testified that he spoke to the landlord and was told that the hotwater had been turned off due to unpaid rent. The tenant testified that his rent was always paid directly to the landlord from the Ministry and it was not his rent that was unpaid. The tenant testified that he had to boil water on the stove for washing. When the landlord found out about this the landlord then had the electricity turned off. This occurred on or about August 18, 2014. The tenant testified that he was without electricity or hot water until September 11, 2014 and both water and electricity are included in his rent as shown on the tenancy agreement. The tenant seeks compensation for the lack of these essential services of \$500.00.

Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on October 11, 2014, five days after it was posted, pursuant to s. 90(a) of the *Act*. As a result, the landlord had until October 26, 2014 to return all of the tenant's security deposit or file a claim to keep it. As the landlord failed to do so, the tenant has established a claim for the return of double the security deposit to an amount of **\$475.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

With regard to the tenant's claim for compensation; I am satisfied with the undisputed testimony before me that the landlord turned off the hot water and hydro to the tenants unit. The tenant was without hotwater from August 11, 2014 to September 11, 2014. I further find the landlord turned off the electricity to the tenant's unit on or about August 18, 2014 until September 11, 2014. I refer the parties to s. 27(1) of the *Act* which states:

27 (1) *A landlord must not terminate or restrict a service or facility if*

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

As these services are both included in the rent, as documented in the tenancy agreement, and as they are both considered to be essential to the tenant's use of the rental unit then I find the tenant has established a claim for compensation.

Rent was \$475.00 per month and the tenant lost his hotwater for nearly five weeks and electricity for nearly four weeks. I find therefore I must limit the tenant's claim to \$50.00 a week for the loss of hotwater and \$50.00 a week for the loss of electricity. The tenant is entitled to a Monetary Order for **\$450.00**

The tenant is also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

For the reasons set out above, I grant the tenant a Monetary Order pursuant to s. 38(6)(b), 67 and 72(1) of the *Act* in the amount of **\$975.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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: June 02, 2015

Residential Tenancy Branch

