



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD MNDC FF

Introduction:

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

- a) A monetary order pursuant to Section 67 for compensation for discarded furniture due to an infestation of bedbugs.
- b) For a return of her security deposit and to recover the filing fee.

SERVICE

The tenant gave sworn testimony that they served the Application for Dispute Resolution personally on the landlord as the landlord lived nearby. I find that the landlord is served with the Application according to section 89 of the Act.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that the landlord through act or neglect violated the tenancy agreement or Act and caused damages to them for which they should be compensated? If so, to how much have they shown entitlement?

Has the tenant proved on a balance of probabilities that she is entitled to the return of her security deposit according to section 38 of the Act?

Background and Evidence:

Only the tenant and an interpreter attended the hearing and were given an opportunity to provide testimony and make submissions. The tenant provided no documents in evidence to support her claims as she said she thought it would be an in person hearing and she could provide her evidence at the hearing. I discussed the necessity of evidence with her and that she must provide copies of all evidence to the landlord at least 14 days before the hearing and earlier if possible.

In respect to her security deposit, she said the tenancy began on December 20, 2014, rent was \$1500 a month for the basement suite and she paid \$700 security deposit to the landlord. After she discovered bed bugs, she gave a Notice to End her tenancy on

January 15, 2015 effective February 15, 2014 and told the landlord verbally her new address. She said she has never supplied it in writing to the landlord.

The tenant provided no documents to support her claim. On the basis of the solemnly sworn evidence, a decision has been reached.

Analysis:

The Act provides for compensation for losses suffered in sections 7 and 67.

S. 7(1): If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

This test must be satisfied:

1. Proof the loss exists
2. Proof the loss occurred solely because of the actions or neglect of the Respondent in violation of the tenancy agreement or the Act
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the damage or loss.

Although the tenant states she has evidence, I find she misunderstood that she had to supply copies to the landlord and the Residential Tenancy Branch. I dismiss this portion of her claim and give her leave to reapply.

Respecting the refund of the security deposit, section 38 of the Act states:

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.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

As explained to the tenant in the hearing, in most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

I find in this case that the tenant has never supplied her forwarding address in writing to the landlord. I advised her in the hearing to provide it as soon as possible, and then wait 15 days to make another application. I dismiss this portion of her application with leave to reapply.

Conclusion:

The Application of the tenant is dismissed with leave to reapply. I find she is not entitled to recover the filing fee for this application as it was not successful.

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: July 22, 2015

Residential Tenancy Branch

