



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 dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's dispute resolution hearing application and notice ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application.

The tenant confirmed that he did not serve a copy of his letter, dated January 12, 2015, upon the landlord for this hearing. The tenant testified that he only provided a copy to the Residential Tenancy Branch ("RTB"). The tenant confirmed that he previously provided this letter to the other "landlord RT," named on the tenancy agreement, a business partner of the landlord on January 12, 2015. The landlord confirmed that he did not receive a copy of this evidence in January 2015.

The landlord confirmed that he provided copies of gas utility bills as written evidence for this hearing, by way of registered mail to the RTB only, not the tenant. I had not received a copy of this evidence. The landlord confirmed that he provided this evidence

to the tenant prior to the hearing, during the course of this tenancy. The tenant confirmed that he did not receive a copy of this written evidence.

As this matter settled, I find no need to make a determination regarding service of both parties' written evidence packages.

Issues to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to a monetary award equivalent to double the value of the security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Both parties agreed that this tenancy began on September 1, 2013. The landlord confirmed that as per the written tenancy agreement, this was a fixed term tenancy of one year after which it transitioned to a month-to-month tenancy. Neither party provided a copy of the written tenancy agreement for this hearing. The tenant stated that the tenancy ended on December 31, 2014, while the landlord claimed that the tenant vacated the rental unit sometime between January 1 and 3, 2015.

Monthly rent in the amount of \$1,200.00 was payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant and the landlord continues to retain this deposit.

The landlord confirmed that no move-in or move-out condition inspection reports were completed for this tenancy. The tenant testified that he delivered a letter, dated January 12, 2015, with the tenant's written forwarding address, to landlord RT. The tenant claimed that landlord RT was supposed to forward this letter to the landlord. The landlord stated that he did not receive this letter. The landlord acknowledged that he did not have written permission from the tenant to retain any amount from the tenant's security deposit. The landlord confirmed that he did not file an application for dispute resolution to retain the tenant's security deposit.

The tenant seeks the return of double the amount of the security deposit, totalling \$1,200.00 because the landlord failed to return the deposit in full or file an application within 15 days after the tenant's written forwarding address was provided to the landlord. The landlord stated that he did not return the tenant's security deposit because he is entitled to approximately \$489.89 for unpaid gas utilities from the tenant.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues with respect to this entire tenancy:

1. Both parties agreed that the landlord will retain \$100.00 from the tenant's security deposit;
2. The landlord agreed to return \$500.00 from the tenant's security deposit to the tenant by way of a cheque to be paid by no later than August 19, 2015;
3. The tenant agreed to bear the cost of the \$50.00 filing fee for his Application;
4. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the tenant's Application at this hearing and any issues arising out of this tenancy;
5. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the landlord's potential claims arising out of this tenancy;
6. Both parties agreed that they will not initiate any further claims or applications against each other at the Residential Tenancy Branch, with respect to any issues arising out of this tenancy.

These particulars comprise a full and final settlement of all aspects of this dispute and arising out of this tenancy. Both parties testified at the hearing that they understood and agreed to the above settlement terms, free of any duress or coercion. Both parties testified that they understood that the above settlement terms were legal, final, binding and enforceable, settling all aspects of this dispute and arising out of this tenancy.

Conclusion

To give effect to the settlement reached between the parties, I order the landlord to retain \$100.00 from the tenant's security deposit of \$600.00.

In order to implement the above settlement reached between the parties and as advised to both parties during the hearing, I issue a monetary Order in the tenant's favour in the amount of \$500.00. I deliver this Order to the tenant in support of the above agreement for use **only** in the event that the landlord fails to abide by condition #2 of the above settlement agreement. The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order in the event that the landlord fails to abide by condition #2 of the above settlement agreement. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant must bear the cost of the \$50.00 filing fee for his Application.

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: August 13, 2015

Residential Tenancy Branch

