



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Terminal Heights Apartments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy started on September 1, 2014 and ended on February 27, 2015. Rent of \$1,105.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$522.50 as a security deposit and \$522.50 as a pet deposit. The Tenant provided its forwarding address in writing at move-out.

The Tenant claims return of double the security deposit.

The Landlord states that the Tenant refused to agree to a deduction for liquidated damages and that the Landlord neither made an application to claim against the security deposit or returned the security deposit to the Tenant.

The Tenant states that the building is a non-smoking building and that despite reporting to the Landlord that other tenants were smoking on their deck the Landlord failed to stop the smoking. The Tenant states that she developed a lung condition during the tenancy, was provided allergy medication and had to purchase an air purifier. The Tenant states that just prior to the hearing the Tenant saw her physician who found that the Tenant's lung condition had improved since leaving the unit. The Tenant provided no supporting medical documentation. The Tenant claims \$450.00 as set out in the monetary worksheet. It is noted that there are no other amounts included in the monetary worksheet.

The Landlord states that they did investigate the Tenant's complaints but could not find any responsible person and could not find the source of any smoke. The Landlord states that the other tenants smoke outside and away from the building. The Landlord states that they cannot take any action if no responsible person is found. The Landlord argues that the Tenant is not entitled to any compensation.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the Landlord's evidence, I find that the Tenant is entitled to return of double the combined pet and security deposit of **\$2,210.00** (\$1,105.00 x 2). The Landlord remains at liberty to pursue its application in relation to any claims it may have against the Tenant.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party. Considering that the Tenant provided no medical documentation to support the Tenant's medical condition or to support that smoke was the cause of the Tenant's medical condition and accepting that the Landlord did act and was not negligent in investigating for smokers in the building, I find that the Tenant has failed to provide sufficient evidence to substantiate its claim. I therefore dismiss the claim for the cost of an air purifier.

As the Tenant has had substantial success with its application I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$2,260.00**. As no other amounts are indicated in the monetary worksheet and no details of the claims I find that the Tenant has provided insufficient particulars and I dismiss the Tenant's claims for medical costs, moving and stress.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,260.00**. If necessary, this order may be filed in the Small Claims Court and 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: August 28, 2015

Residential Tenancy Branch

