Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD MNDC FF

Introduction

Only the tenant attended and gave sworn testimony that he served the landlord with the Application for Dispute Resolution by registered mail. The Postal Service stated there was no tracking information on it but the tenant stated it had been accepted and signed for by another tenant residing in the home where the landlord lived who was to bring it to her attention. I find the tenant legally served the Application in accordance with section 89 of the Act but I find insufficient evidence that the landlord ever received it. The hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for an Order to return double the security deposit pursuant to Section 38; and to obtain a refund of one month's rent and recover the filing fee for this application.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that he is entitled to the return of double the security deposit according to section 38 of the Act and to a refund of one month's rent and to recover the filing fee?

Background and Evidence

Only the tenant attended the hearing and was given opportunity to be heard, to present evidence and make submissions. The tenant said he had paid a security deposit of $330 on June 20, 2014 to rent a room from a head tenant in the same home. There were four tenants sharing the home. He submitted receipts showing he paid $330 security deposit, $660 rent for July and $685 rent for August 2014. He said he gave Notice to End his tenancy on August 8, 2014, vacated the unit on August 14, 2014 and gave his forwarding address in writing on that day. He said his deposit has never been returned and he gave no permission to retain any of it.

He claims a refund of one month's rent. He said he paid July's rent to secure the unit although he only stored some items as he was renting elsewhere. When he moved into the unit in August 2014, he said the landlord significantly disturbed his reasonable enjoyment by arguing and being unreasonable. For example, he said he painted the room as it badly needed paint but then the head tenant (his landlord) became very upset and said the owners had said there were to be no alterations. He said there were

many other issues showing a lack of integrity such as her blaming him for poisoning her dog and demanding he pay bills for a vet. Furthermore, he said the landlord had promised him use of a garage for storage and some parking in the driveway but did not allow him this use after he moved in. He said he sent emails to her about the parking but just got an email answer about damage to a carpet. Because of these problems, he decided he had to move and gave her Notice on August 8, 2014 to end his tenancy.

When I asked the tenant if he had anything in writing such as a tenancy agreement to show use of a garage or parking were included in his tenancy, he said he had nothing but his oral testimony should be enough. He continued complaining about the landlord's actions in order to justify a refund of one month's rent, although he had given inadequate notice to end his tenancy. He said he saw no advertisements to show that the landlord had attempted to re-rent the room.

In evidence is a registered mail receipt, receipts for rent and security deposit and a written statement from the tenant and photographs. One photograph shows the tenant's 30 day Notice dated August 8, 2014. Other photographs show dirty carpet and walls needing paint and then repainted and utility bills on a door. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis:

The *Residential Tenancy Act* provides:

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.

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 the evidence of the tenant credible that he paid $330 security deposit on June 20, 2014, served the landlord personally with his forwarding address in writing on August 14, 2014 and vacated on August 14, 2014. I find he gave no permission for the landlord to retain the deposit and has not received the refund of his security deposit. I find his evidence supported by his receipt for the security deposit, rental payments and the photo of his Notice to End tenancy. He said the landlord has not filed an Application to claim against the deposit. I find the tenant entitled to recover double his security deposit.

In respect to his claim for a refund of one month's rent, I find he made a verbal agreement to rent the room commencing in July 2014 and paid a deposit in June 2014 and one month's rent in July. Then he paid rent for August 2014 and gave Notice that he was ending his tenancy on August 8, 2014. Although he contends the landlord was disagreeable and unreasonable and cited her objecting to his painting the room, I find her complaint as noted by him in the hearing was reasonable as she said the owner had to authorize any alterations. Although he contended this was not an alteration, I find any change might be defined as an alteration by the owner.

Although he might only have used the room for storage in July and only occupied it for part of the time in August, I find his occupancy in July and August precludes the landlord's ability to collect rent for those two months from someone else so he is liable for rent for this time. He gave short notice and although he contends the landlord did not try to re-rent the unit, there is no evidence before me that the landlord has tried to claim rent for a subsequent month (September) because of the lack of a full 30 day notice so I find his point on re-renting to be irrelevant. Even if he moved out early, I find he is not entitled to the refund of rent for that month as he is responsible for the rent for the whole month and must give a full month's notice to end his tenancy pursuant to sections 44 and 45 of the Act.

Regarding his contention that he did not get garage space and parking as promised, I find insufficient evidence to support his verbal evidence that he was promised these additional items. He said he had emailed the landlord about the parking but he did not provide any copies of this email correspondence in evidence.

He also believes he is entitled to the one month rent refund because the landlord interfered with his reasonable enjoyment contrary to section 28 of the Act. He complained of the argument over painting, cleaning issues, dirty carpet and an accusation about poisoning a dog. I find insufficient evidence to support his allegations. He thought his sworn testimony should be sufficient. However, although he cited some emails, he provided none in evidence or of any demand to pay a vet bill. He contends that the carpet cleanliness is an issue in dispute but I find insufficient evidence of any dispute with the landlord on this. While he and the landlord may have had significant disagreements, I find insufficient evidence that these were caused by the landlord and that they amounted to a significant interference with his peaceful enjoyment.

He indicated that he did not get what he expected, a nice property with flowers and good maintenance. I find it is up to the tenant to inspect the unit before agreeing to rent it. He had the choice not to rent if it did not meet his standards or to bring an Application for Dispute Resolution to have the landlord maintain the property pursuant to sections 32 and 33 of the Act. However, I find he agreed to rent the property, paid his security deposit and rent in July and August 2014 and then moved out with insufficient notice. I find insufficient evidence to allow him a refund of one month's rent. I dismiss this portion of his claim.

Conclusion:

I find the tenant entitled to a refund of twice his security deposit and to recover his filing fee. I dismiss the remainder of his Application without leave to reapply.

Original security deposit	330.00
Double deposit (section 38)	330.00
Filing fee	50.00
Total Monetary Order	**710.00**

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: February 03, 2016

Residential Tenancy Branch