



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* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant did not provide any documentary evidence. The landlord submitted a documentary evidence package consisting of approximately 20 pages. The tenant stated that she did not receive any documents from the landlord. The landlord stated that the documentary evidence was sent to the tenant's mailing address provided on her application for dispute via Canada Post Registered Mail on March 31, 2016. The landlord has provided the Canada Post Customer Receipt Tracking number as confirmation of service. The landlord stated that an online search of the Canada Post Website showed that delivery was attempted with a notice card alerting the tenant to pick up the package. A second attempt was also made by Canada Post with a final notice left for an attempt of service of the package where the package would then be returned to the sender after 10 days. During the hearing, both parties consented to an online search of the Canada Post Website. A review of the site using the Customer Receipt Tracking number confirmed the landlord's service in this manner. I accept the landlord's evidence that the tenant was properly served with the submitted documentary evidence via Canada Post on March 31, 2016 and find that the tenant is deemed served as per section 90 of the Act.

During the hearing the tenant clarified that her monetary claim of \$1,000.00 was being lowered to \$855.00 due to a mathematical error on her part. The landlord did not object to the amendment.

During the hearing both parties also clarified that the dispute address should have been the "basement" as both the application shows that the dispute address and the landlord's address were the same. As such, the tenant's application shall be amended to include "Basement" for the dispute address.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 15, 2015 on fixed term tenancy ending on February 15, 2016 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated July 17, 2015. The monthly rent was \$850.00 payable on the 15th day of each month and a security deposit of \$425.00 was paid on July 17, 2015.

Both parties confirmed that the tenant vacated the rental premises on August 30, 2015 and that the tenant provided her forwarding address in writing to the landlord on August 30, 2015 in a handwritten letter. The landlord confirmed receiving the tenant's request for the return of the security deposit and the forwarding address in writing in this manner.

The tenant seeks an amended monetary claim for \$855.00 which consists of:

| | |
|----------|-------------------------------------|
| \$425.00 | Return of Original Security Deposit |
| \$150.00 | Dry Cleaning Charges |
| \$200.00 | Disposal of tainted Food |
| \$80.00 | Cleaning Supplies |

During the hearing the tenant withdrew her claim for the \$150.00 for dry cleaning charges.

The tenant stated that a rat was detected in the basement suite after having lived there for two weeks. The tenant stated that she had no choice but to move out as it was infested with rats. The tenant stated that the landlord was informed who chose to do nothing.

The landlord disputed the tenant's claims stating that he acknowledged that one rat was reported, but that the landlord had placed traps upon being notified. The landlord stated that he was never shown any other proof of multiple rats or of any rat droppings in the rental premises. The landlord stated that he was never provided any details of the tenant's claims prior to the hearing. The landlord stated that the tenant vacated the rental unit without any notice.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove on the balance of probabilities that the landlord failed to act in dealing with the rat problem that caused the damage.

The landlord has disputed the tenant's claims and that he responded to the situation by installing rat traps in the rental premises. The tenant has not provided any evidence to support her claim that the landlord was negligent in responding to the tenant's claims. The tenant has not provided any evidence to support her claim for the amounts claims. For example the tenant failed to provide an accounting or any specific details for the costs of the food or cleaning supplies. On this basis, I find on a balance of probabilities that the tenant has failed to provide sufficient evidence to satisfy me of her claims for food and cleaning supply costs. These portions of the tenant's application are dismissed.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within

15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit. However, pursuant to paragraph 38(4)(a) of the Act, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

I find based upon the undisputed affirmed evidence of both parties that the landlord failed to return the original \$425.00 security deposit within 15 days of receiving the tenant's forwarding address in writing. Both parties confirmed that the landlord still held the original security deposit as of the date of this hearing. The landlord acknowledged in his direct testimony that he did not have permission from the tenant to retain the security deposit, nor did the landlord make an application to dispute the return of the security deposit. The tenant has established a claim for return of the original \$425.00 security deposit.

Pursuant to section 38 (6) of the Act, the landlord having failed to comply with section 38 must pay the tenant an amount equal to the \$425.00 security deposit. The tenant is also entitled to a monetary claim of \$425.00.

The tenant having been successful is also entitled to recovery of the \$50.00 filing fee.

Conclusion

I issue a monetary order in the tenant's favour under the following terms which allows the tenant to recover her original security deposit plus a monetary award equivalent to the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act:

| Item | Amount |
|---|-----------------|
| Return of Security Deposit | \$425.00 |
| Monetary Award for Landlord's Failure to Comply with s. 38 of the Act | 425.00 |
| Recovery of Filing Fee | 50.00 |
| Total Monetary Order | \$900.00 |

The tenant is provided with this order in the above terms and the landlord(s) must be served with a copy of this order as soon as possible. Should the landlord(s) fail to

comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: April 12, 2016

Residential Tenancy Branch