



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O, OPT, RP, RPP

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 obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65; and
- an order of possession of the rental unit pursuant to section 54.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence on May 26, 2016 via Canada Post Registered Mail. The landlord confirmed service of the notice of hearing and the submitted documentary evidence in this manner. The landlord also confirmed that no documentary evidence was submitted by the landlord. I accept the undisputed affirmed testimony of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act. The landlord is deemed to have received the tenant's notice of hearing package and the submitted documentary evidence 5 days later as per section 90 of the Act.

Preliminary Issue(s)

At the outset the tenant stated that he was cancelling the following portions of his application:

- Request for an Order of Possession.

- Request for an Order for the landlord to comply with the Act, Regulation or Tenancy Agreement.
- Request for the landlord to make repairs to the rental unit.
- Request for the landlord to return personal property.

The landlord provided testimony that he understood and had no objections. The hearing proceeded on the tenant's request for monetary compensation and return of the security deposit.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation and return of the security deposit?

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.

Both parties confirmed that no signed tenancy agreement was made, but that an agreement was made for the tenant to rent the premises from the landlord for \$525.00 per month and that a \$262.00 security deposit was paid.

Both parties agreed that the tenant paid the landlord \$787.00 which consists of \$525.00 in rent for April 2016 and a \$262.00 security deposit.

The tenant claims that a verbal agreement was made that the tenancy agreement was to begin April 15, 2016, but could not because incomplete renovations and cleaning. The tenant stated that possession took place on April 20, 2016 when the tenant's employee received the keys to the rental property. The tenant stated that he had to locate alternative accommodations for his employee and suffered expenses to rent a hotel room for the employee. The tenant stated that on May 5 the landlord attended the tenant's place of business and began to harass his employee about the unpaid May rent. The tenant stated that due to all of the harassment by the landlord at his place of business, his tenant quit.

The landlord provided affirmed testimony that the tenant entered into a verbal agreement to rent the premises beginning on April 1, 2016, but that as the tenant had requested renovation/repairs and cleaning that the rental premises would not be

available until April 15, 2016. The landlord stated that the rental was for the tenant and his wife as alternate accommodations when he was visiting his local business. The landlord stated that he would consider an arrangement with the tenant to allow the tenant's camper on the lawn as accommodations for the tenant's employee. The renovation/repairs/cleaning were not completed until April 17, 2016. The landlord also stated that the tenant had agreed to secure the rental tenancy by paying the April 2016 rent and the security deposit. The landlord stated that the tenant had possession of the rental unit as of April 1, 2016 and was able to start moving in pending the completion of the renovations/repairs and cleaning. The landlord stated that he provided keys to the tenant's employee on April 20, 2016. The landlord stated that the tenant failed to pay rent for May 2016 and when he went to the tenant's place of business to inquire why, he was told by the tenant's employee that the tenant would not be continuing the tenancy. The landlord stated that the rental unit was discovered empty on May 8, 2016 unlocked and with the door open. The landlord stated that some possessions that he had viewed previously in the rental unit were now gone.

The tenant confirmed that he is longer in possession of the rental unit. The landlord confirmed in his direct testimony that he has since re-rented the rental unit as of June 1, 2016.

The tenant seeks a monetary claim of \$4,224.00 which consists of:

\$787.00	Return of April Rent (\$525.00) and the Security Deposit (\$262.00)
\$552.00	Lodging for Tenant's Employee when rental not ready (Leland Hotel Credit Card Receipts, April 7/16 for \$100.00, April 8/16 for \$126.00 and April 15/16 for \$226.00)
\$160.00	Gas and Travelling for Tenant (4 days @ \$40.00)
\$1,200.00	Moving Costs for Tenant's Employee
\$525.00	Recovery of Rent Difference for tenant's employee's new rental
\$1,000.00	Time and Effort for tenant's travel

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 caused the loss.

The tenant has provided details of the tenancy in one manner and the landlord has disputed these claims and provided details of the tenancy in an alternative manner. The tenant has relied primarily on his direct testimony. I find on a balance of probabilities that the tenant has failed as the tenant has failed to provide sufficient evidence to satisfy me of his claim.

However, the tenant has also made application for return of the \$262.00 security deposit. Both parties confirmed that the landlord currently holds the \$262.00 security deposit. 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 receipt of the tenant's forwarding address in writing. In this case, neither party has provided any details of when the tenant provided his forwarding address in writing for the return of the security deposit. As such, I find that this portion of the tenant's application is premature and dismiss it with leave to reapply.

Conclusion

The tenant's monetary claim is dismissed.

The tenant's request for return of the security deposit is dismissed with leave to reapply.

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: June 22, 2016

Residential Tenancy Branch