



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding The Realty Group (RTG)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and his advocate.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally on November 27, 2015 in accordance with Section 89.

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for emergency moving and breaching a fixed term tenancy and return of his security deposit, pursuant to Sections 32, 38, 67, and 72 of the *Act*.

Background and Evidence

The tenant submitted his Application for Dispute Resolution on November 26, 2015 and moved out of the rental unit on December 5, 2015.

The tenant stated the tenancy began in August 2015 for a fixed term for a monthly rent of \$1,100.00 due on the 1st of each month with a security deposit of \$550.00 paid.

The tenant testified that the landlord had failed to provide adequate heating during the tenancy and the heat would fluctuate from freezing to boiling. The tenant submits that as a result he became very ill with double pneumonia and collapsed left lung.

While the tenant's Application indicated he sought \$1,800.00 for the return of the deposit and emergency moving costs his written submission stipulates that he wants \$550.00 for his security deposit and \$750.00 for moving costs or a total of \$1,300.00.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32(1) of the *Act* requires the landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law and having regard to the age, character and location of the rental unit make it suitable for occupation by a tenant.

I accept the tenant's undisputed testimony that the landlord had failed to provide heat as described. I also accept the tenant engaged local police and sought an intervention from the Residential Tenancy Branch.

However, the tenant has provided no evidence of any costs incurred because he moved out of the rental unit. As such, I find the tenant has failed to establish that he has suffered a financial loss or the value of that loss for any moving costs.

The *Act* allows a landlord to hold a security deposit by requesting one at the start of the tenancy. The *Act* also then requires the landlord to either return the deposit within 15 days of the end of the tenancy and receipt of the tenant's forwarding address or file an Application for Dispute Resolution claiming against the deposit.

As the tenant applied to have his security deposit prior to the end of the tenancy I find the landlord had no obligation at that time to return the deposit. As such, I find the tenant's claim to return it was premature.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety. I grant the tenant leave to reapply for return of his security deposit in accordance with any limitations set forth in the *Act*.

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: July 8, 2016

Residential Tenancy Branch