



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by Landlord on May 6, 2016 for a Monetary Order for damage to the rental unit, to keep the Tenant’s security deposit, and to recover the filing fee from the Tenant.

Both parties appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord’s Application and the Landlord’s documentary and photographic evidence. The Tenant confirmed that he had not provided any evidence prior to this hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

The Landlord presented evidence of his monetary claim which included costs associated with the Tenant breaching the fixed term tenancy agreement. This was documented in the “DETAILS OF THE DISPUTE” section of the Application. Therefore, as the Tenant had been put on notice that the Landlord was claiming for loss which was in addition to damages to the rental unit, I amended the Landlord’s Application for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”). I did this pursuant to my authority under Section 64(3) (c) of the Act.

The Tenant asserted that the Landlord had extinguished his right to make a claim against the security deposit because the Landlord had failed to complete a move-in and move-out condition inspection report. However, the Tenant was informed that Section 35(2) of the Act which provides for the consequences of not complying with the reporting requirements of the Act only applies to a claim made for damages to the rental unit. Pursuant to point B9 in Policy Guideline 17 to the Act, the Landlord still retains the

right to file an Application to keep the security deposit for claims other than damage to the rental unit. In this case, the Landlord applied for loss associated with the breakage of the fixed term tenancy.

The parties confirmed that this tenancy had started on September 1, 2015 for a fixed term tenancy of 18 months. However, the tenancy ended prematurely on April 30, 2016. The Landlord provided a mutual agreement to end the tenancy document signed by both parties into evidence. After the parties had finished providing their evidence with respect to the ending of the tenancy and damages to the rental unit, I offered the parties an opportunity to deal with this matter by way of mutual settlement.

Settlement Agreement

Pursuant to Section 63 of the Act the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. As a result, the parties engaged into a discussion, turned their minds to compromise, and agreed that resolution was best by way of mutual settlement. The Tenant allowed the Landlord to deduct \$685.88 from the Tenant's security deposit to settle the Landlord's Application in full. The parties agreed that the Landlord will return the remainder \$154.12 security deposit back to the Tenant forthwith by email transfer to the email address documented on the front page of this decision.

The Tenant is issued with a Monetary Order to be enforced by the Tenant **if** the Landlord fails to make payment in accordance with this agreement. The Tenant may enforce the order through the Small Claims Division of the Provincial Court as an order of that court. The Landlord is cautioned to ensure that documentation is retained in relation to the payment made. This agreement is fully binding on the parties. The parties confirmed voluntary resolution in this manner both during and at the end of the hearing. This file is now closed. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 18, 2016

Residential Tenancy Branch