



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O

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 the landlord. I note that the landlord in attendance at the hearing submitted that she was the owner of the property. She stated that her father is the named respondent and he was her agent.

I reviewed the tenancy agreement and found that the tenancy agreement lists the respondent named by the tenant as the respondent to this claim. As such, I find landlord in this tenancy was the owner's father.

From the tenant's original Application for Dispute Resolution the tenant was making a monetary claim totaling \$2,351.00 however at the outset of the hearing the tenant requested to reduce this amount by the amount of the claim for a mattress replacement; the moving costs from storage to her new location; and by \$65.00 for her claim of return of the security deposit leaving a balance of claim to be \$1,707.50.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation resulting from the tenancy and for return of the security deposit, pursuant to Sections 32, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on January 15, 2015 for a 7 month fixed term tenancy beginning on February 1, 2015 for a monthly rent of \$775.00 due on the 1st of each month with a security deposit of \$387.50 and a pet damage deposit of \$387.50 paid; and
- A copy of a tenancy agreement signed by the parties on August 30, 2015 for a 8 month fixed term tenancy beginning on September 1, 2015 for a monthly rent of \$865.00 due on the 1st of each month.

The parties agreed that on November 13, 2015 the rental unit flooded and that the owner's father (respondent) agreed on November 17, 2015 that the tenancy ended on November 13,

2015. In support of this the tenant submitted into evidence copies of an email exchange between the respondent and the tenant. The landlord did not dispute the agreement to end the tenancy was a mutual.

The tenant submitted that there had been a history of problems with the rental unit including high humidity and a leak in the living room. The landlord submitted that the tenant's concerns were responded to in a timely fashion. The landlord submits that the flood in November was the result of a major rainfall in the area. The landlord noted that this impacted their ability to have restoration completed quickly due to availability of restoration professionals.

As a result of the flood and the subsequent end to the tenancy the tenant seeks the following compensation:

Description	Amount
Moving expenses – receipt submitted	\$350.00
Storage costs (1 month) – receipt submitted	\$210.00
½ month's rent	\$437.50
Total	\$997.50

The landlord agreed to return ½ month's rent to the tenant, both in their written submission and in their testimony at the hearing.

The tenant also seeks return of her security and pet damage deposits less \$65.00 for a total of \$710.00. The tenant submitted that she had provided her forwarding address to the landlord at the end of the tenancy. The landlord does not recall receiving the tenant's address prior to receiving the tenant's Application for Dispute Resolution.

The landlord testified that despite receiving the tenant's Application for Dispute Resolution with her address on it she did not think to either return the deposit or file an Application to claim against the deposit.

Analysis

I accept the landlord's agreement that the tenant is entitled to return of ½ month's rent.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

In the case before me, the landlord submitted that the flood that occurred in November 2015 resulted from a major rainfall in the area and the tenant suggests that the flood may have been part of a larger and previous problem with water ingress into the unit. However, in the absence of any documentary or direct proof that the flood result from any act or negligence on the part of the landlord I find the flood resulted as a result of the major rainfall.

As a result, I don't find that the landlord should be held responsible for the costs of moving the tenant out of the rental unit or putting her belongings in storage. Even if the landlord were responsible, I find the tenant had an obligation to mitigate any losses through insurance for her

personal property and possession and there is no evidence before me that the tenant pursue any such insurance claim.

As such, I dismiss the tenant's claim for compensation for moving costs and storage.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I find that while the landlord cannot confirm when she received the tenant's forwarding address I note that the landlord has had the tenant's Application for Dispute Resolution at least since early January 2016 and has made no attempt to file an Application for Dispute Resolution seeking to claim against the deposit.

As such, I find the landlord has failed to comply with the requirements of Section 38(1) and the tenant is therefore entitled to double the amount of the deposits held less the \$65.00 the tenant agrees the landlord can retain or \$710.00 times 2 for a total of \$1,420.00.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,852.50** comprised of \$1,420.00 double security deposit and the \$432.50 rent returned.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order 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: August 11, 2016

Residential Tenancy Branch