



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of double the security deposit - Section 38;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

Preliminary Matters

The Tenant confirms that the name of the dispute address street name was misspelled in the application. The Tenant confirms that this was corrected on its other copies and seeks a correction for the application. As there is no prejudice to the Landlord I set out the corrected spelling of the dispute address.

The Landlord did not attend the hearing. The Tenant provided a copy of a text from the Landlord instructing the Tenant to send mail for the Landlord to the dispute address. It is noted that the Landlord did not provide its address for service on the written tenancy agreement. The Tenant served the Landlord with the application for dispute resolution and notice of hearing to this address by registered mail. The Tenant confirms that the mail was sent to the correctly spelled dispute address. I accept therefore that the Landlord was served the application for dispute resolution in accordance with Section 89 of the Act.

The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on January 25, 2015 on a fixed term ending January 24, 2016. At the end of the term the Tenant was required to move out of the unit and the Tenant did move out of the unit in early January 2016. Rent of \$2,150.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$2,150.00 as a security deposit. The Tenant provided its forwarding address in writing on the move-out inspection report completed on February 3, 2016.

The Landlord has not returned the security deposit and has not made an application for dispute resolution to claim against the security deposit. The Tenant claims return of double the security deposit.

Despite the rental amount provided for in the tenancy agreement the Landlord charged the Tenant an extra \$50.00 each month for the length of the tenancy for having a roommate. The Tenant claims reimbursement of \$600.00.

Despite being told not to by the Tenant, the Landlord attempted to cash a cheque for February 2016 rent and it was returned NSF. This cost the Tenant \$40.00 as a bank charge and the Tenant claims this amount.

The Tenant accidentally left behind two chairs in the unit and the Landlord told the Tenant that they were thrown out. The Tenant does not know the age or the original cost or the replacement cost of these chairs and claims \$200.00 in compensation.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the undisputed evidence of the Tenant I find that the Landlord failed to return the security deposit or to make a claim against the security deposit and that the Landlord must therefore pay the Tenant double the security deposit of **\$4,300.00** plus zero interest. I note that the Landlord acted contrary to the Act in collecting a full month for a security deposit at the outset of the tenancy.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Given the undisputed evidence of the tenancy agreement provision for rent and the additional amount collected by the Landlord I find that the Tenant has substantiated that the Landlord did not comply with the tenancy agreement. The Tenant is therefore entitled to recovery of the extra rent paid in the amount of **\$600.00**.

As the tenancy agreement provided that the Tenant was to move out of the unit at the end of the tenancy the Landlord was not entitled to any rent for February 2016. Based on the undisputed evidence that the Landlord attempted to cash the Tenant's cheque for February 2016 I find that the Tenant has substantiated that the Landlord failed to comply with the tenancy agreement. As a result I find that the Tenant has substantiated the entitlement to the bank charge of **\$40.00**.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. Given the lack of evidence of the value of the chairs, I find that the Tenant has not substantiated that a loss has been incurred and I dismiss the claim in relation to the chairs.

As the Tenant's application has met with substantial success I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$5,040.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$5,040.00**. If necessary, this order may be filed in the Small Claims Court and 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: October 12, 2016

Residential Tenancy Branch