



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

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*, *Residential Tenancy Regulation* ("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; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and landlord's agent, KC (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed receipt of the tenant's application and evidence package for dispute resolution. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application and evidence package.

Preliminary – Previous Hearing

This application was the subject of a previous hearing held on October 20, 2016 in which no decision was rendered. The Residential Tenancy Branch rescheduled that hearing to have the matter re-heard and a decision issued.

Preliminary - Procedural Matters

During this hearing, the tenant was warned for his disruptive behaviour. The tenant consistently interrupted me and the landlord throughout the proceedings. Towards the end of the hearing, the tenant requested a verbal decision. When told the decision would be mailed as per branch policy, the tenant became agitated, raised his voice and stated he recorded the hearing and will be contacting his local MLA and police agency.

The tenant was advised he was prohibited from recording the dispute resolution hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant authorized to obtain a return of all or a portion of her security deposit?

Is the tenant authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the testimony of the parties, the tenancy began on September 15, 2015 on a fixed term until December 15, 2015. Rent in the amount of \$825.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$412.50 at the start of the tenancy. The tenant vacated the rental unit on December 13, 2016.

Tenant

The tenant testified that upon vacating the rental unit on December 13, 2016, the tenant provided the landlord with his forwarding address on the condition inspection report. At the end of the tenancy, the tenant agreed in writing that the landlord could retain \$65.00 for steam cleaning the carpet. The tenant testified that in the absence of the prompt return of his security deposit, he sent multiple emails to the landlord with his forwarding address. The tenant has provided copies of these emails.

The tenant testified that the landlord only returned \$322.50 of his security deposit and this amount was returned past the 15 days allowable under the *Act*. The tenant has submitted a copy of the security deposit cheque dated, February 23, 2016.

Landlord

The landlord testified that he does not have a copy of an inspection report, and therefore cannot confirm he received the tenant's forwarding address on December 13, 2016. The landlord acknowledges receipt of the tenants address via email on January 18, 2016 but contends this method is not in accordance with the service provisions of the *Act*. The landlord testified that he is uncertain when the security deposit was mailed to the tenant but contends it was within the allotted time under the *Act*. The landlord

confirms the landlord mistakenly withheld \$90.00 rather than the agreed upon amount of \$65.00 from the security deposit.

Analysis

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. Should the landlord fail to do this, the landlord must pay the tenant double the amount of the security deposit.

Although the tenant testified that he provided his address in writing to the landlord on December 13, 2015 by way of including it on the condition inspection report, neither party has provided a copy of this report to substantiate this claim. In the absence of sufficient evidence, I find the tenant did not provide his forwarding address in writing, on December 13, 2016.

Section 88 of the *Act* sets out how documents may be delivered. Email is not an acceptable method of service pursuant to section 88 of the *Act*. Accordingly, the tenant did not provide his forwarding address to the landlord in compliance with the *Act* when he delivered his forwarding address by email to the landlord on January 18, 2016.

Section 71(2)(c) allows me to order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*. In this case the landlord acknowledged receipt of the January 18, 2016 email which contained the tenant's forwarding address. It is clear that the landlord had this address in its possession. I find, pursuant to paragraph 71(2)(b), that the landlord received the tenant's forwarding address on January 18, 2016, the date the address was forwarded to the landlord by email. As the landlord had actual notice of the tenant's forwarding address, I order that the tenant's forwarding address was sufficiently delivered for the purposes of this *Act*.

Based on documentary evidence, the landlord did not issue the security deposit cheque until February 23, 2016, well beyond the fifteen days allowable under the *Act*. The landlord returned \$322.50 of the security deposit yet the parties agreed the landlord only received written authorization to retain \$65.00 of the security deposit. As the tenant received his security deposit past the fifteen days allotted by the *Act*, and not in the amount previously agreed to, I find the tenant is entitled to double the value of his security deposit. Specifically I find the tenant is entitled to \$412.50 less the \$65.00 the

tenant authorized the landlord to retain for a security deposit of \$347.50 doubled to \$695.00 less the \$322.50 already paid by the landlord for a total of \$372.50.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$472.50 against the landlord.

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: November 22, 2016

Residential Tenancy Branch