



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, O

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and for “other”.

The Tenant stated that on May 26, 2016 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted with the Application were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the documents were accepted as evidence for these proceedings.

On October 24, 2016 the Tenant submitted an Amendment to an Application for Dispute Resolution, in which he amended his service address. The Tenant stated that he served this document to the Landlord, via regular mail, on October 26, 2016. The Agent for the Landlord stated that she did not receive this document. As the Amendment to an Application for Dispute Resolution did not make any substantive changes to the Application for Dispute Resolution I determined it was reasonable to proceed with the hearing even though the Agent for the Landlord did not acknowledge receiving the Amendment.

On October 24, 2016 the Tenant submitted five pages of evidence to the Residential Tenancy Branch. The Tenant stated that he served these documents to the Landlord, via regular mail, on October 26, 2016. The Agent for the Landlord stated that she did not receive this evidence. As the Agent for the Landlord did not acknowledge receipt of the evidence and the Tenant did not submit any evidence to corroborate his testimony that it was mailed, the Tenant was advised that the documents would not be accepted as evidence for these proceedings.

The Tenant was advised that he may testify regarding the content of the documents he submitted on October 24, 2016 but the physical documents would not be accepted as evidence. He was advised that if at any point during the hearing he deemed it necessary for me to view one of those documents he had the right to request an

adjournment. The hearing was concluded without either party requesting an adjournment.

On November 12, 2016 the Landlord submitted one page of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was not served to the Tenant. As the evidence was not served to the Tenant it was not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?

Is the Tenant entitled to compensation for moving costs and/or damaged property?

Background and Evidence:

The Agent for the Landlord and the Tenant agree that:

- the tenancy began on February 16, 2016;
- they entered into a fixed term tenancy agreement, the fixed term of which ended on February 28, 2017;
- the tenancy agreement required the Tenant to pay rent of \$1,000.00 by the first day of each month;
- a security deposit of \$500.00 was paid;
- the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, dated June 01, 2016;
- the Ten Day Notice to End Tenancy for Unpaid Rent declared that the Tenant must vacate the rental unit by June 11, 2016;
- the Tenant filed an Application for Dispute Resolution to dispute the Ten Day Notice to End Tenancy;
- a hearing was convened on July 06, 2016 to consider the merits of the Tenant's application to cancel the Ten Day Notice to End Tenancy;
- the Landlord did not return any portion of the security deposit;
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit; and
- the Tenant did not give the Landlord a forwarding address, in writing, until he served her with the Application for Dispute Resolution and associated documents..

The Tenant stated that he vacated the rental unit on June 11, 2016. He stated that he vacated the rental unit prior to the hearing on July 06, 2016 because he wanted to move out of the unit due to concerns discussed at the hearing. The Agent for the Landlord stated that she is not certain when the rental unit was vacated, but believes it was sometime around June 11, 2016.

Residential Tenancy Branch records show that the Residential Tenancy Branch Arbitrator dismissed the Tenant's Application for Dispute Resolution because the Tenant had moved and she considered it moot to determine whether or not the Ten Day Notice to End Tenancy should stand.

The Tenant stated that he did not give the Landlord written permission to retain any portion of his security deposit. The Agent for the Landlord stated that the Tenant may have given her an email in which he granted permission to the Landlord to retain his security deposit, although she is not certain.

At the hearing the Tenant provided the Landlord with his current address. The Landlord stated that she recorded that address and both parties agreed that for the purposes of this tenancy the Landlord received a forwarding address for the Tenant, in writing, on the date of this hearing.

The Tenant is seeking compensation, in the amount of \$3,699.00, for damaged personal property.

In support of the claim for \$3,699.00 the Tenant stated that:

- after moving into the rental unit he noticed it was infested with moths, silverfish, ants, and an unidentified insect that he suspects were bed bugs or wood bugs;
- he first reported his concerns about insects to the Agent for the Landlord, via email, near the end of February of 2016;
- he did not submit any evidence from an expert to corroborate his testimony that the rental unit was infested with insects;
- his bed, clothing and couch were destroyed by the infestation; and
- he did not submit any documentary evidence to support his claim that his personal items were destroyed.

In response to the claim for \$3,699.00 the Agent for the Landlord stated that:

- in May of 2016 the Tenant advised her that there were insects in the rental unit;
- the Tenant told her there were silverfish, ants, and other insects, although she cannot recall the type of the other insects;
- she did not go to the rental unit for the specific purpose of investigating the Tenant's report of insects;
- when she was in the rental unit showing the unit to people interested in renting the unit after June 11, 2016 she did not notice any insects;
- the people currently living in the rental unit have not reported any problem with insects; and
- an exterminator has not been employed as the Landlord does not believe there is an infestation.

The Tenant submitted 3 photographs, one of which is of extremely poor quality and has little evidentiary value.

Two of the photographs are the same image, although one is a colour photograph and the other is in black and white. This is an image of a carpet which has one small black object on it, which may be an insect. The Tenant stated that this is a photograph of an unknown insect.

The Tenant is seeking compensation for moving costs, in the amount of \$300.00.

In support of the claim for \$300.00 the Tenant stated that:

- he decided he had to move, in part, because of the aforementioned insect infestation;
- he decided he had to move, in part, because the Landlord entered his rental unit, without authority, on three occasions;
- on February 18, 2016 he arrived home to find that workers renovating the lower suite had entered his rental unit for the purposes of working on the plumbing;
- on February 27, 2016 he arrived home to find items moved, which caused him to believe that the Landlord, or someone acting on behalf of the Landlord, had entered his rental unit;
- on March 08, 2016 he was at home when an insurance inspector open his door with a key and entered the unit without knocking; and
- had not received any notice that someone would be entering his unit on the aforementioned occasions.

In response to the claim for \$300.00 the Agent for the Landlord stated that:

- the Tenant was aware that the lower unit was being renovated in February of 2016;
- it is possible that people working in the lower unit on February 18, 2016 entered the unit without proper notice;
- the Tenant told her that someone was inside the rental unit on February 27, 2016, but she does not know who that was; and
- the insurance inspector was provided with a key to the rental unit and she understands he entered the rental unit without notice on March 08, 2016.

Analysis:

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*.

On the basis of the undisputed evidence I find that:

- the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Act*;
- the Ten Day Notice to End Tenancy required the Tenant to vacate the rental unit by June 11, 2016;
- the Tenant filed an application to dispute the Ten Day Notice to End Tenancy; and

- the Tenant subsequently opted to vacate the rental unit on June 11, 2016.

On the basis of this evidence I find that the tenancy ended on June 11, 2016 pursuant to section 44(1)(a) of the *Act*.

Section 38(1) of the *Act* stipulates 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 either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits.

In these circumstances the Landlord did not receive the Tenant's forwarding address in writing until the Landlord was served with the Tenant's Application for Dispute Resolution. I therefore find that the Tenant filed his application for the return of the security deposit prematurely, as he had not yet served the Landlord with a forwarding address.

I find that the service of the Application for Dispute Resolution served the Landlord with notice that there would be a hearing regarding the security deposit but it did not constitute service of a forwarding address for the purposes of section 38(1) of the *Act*. I find that it entirely possible that the Landlord believed it was too late to file a claim against the security deposit at that point or the she should wait until the dispute resolution proceeding was completed before returning the Tenant's security deposit.

As the Tenant applied for the return of his security deposit prematurely, I dismiss his application for the return of the deposit.

As discussed with the parties at the hearing I find that, for the purposes of section 38(1) of the *Act*, the Landlord received a forwarding address for the Tenant, in writing, on November 17, 2016. In the event the Landlord fails to return the Tenant's security or to file an Application for Dispute Resolution by December 02, 2016, the Tenant retains the right to file another Application for Dispute Resolution claiming for the return of double that deposit, pursuant to section 38(6) of the *Act*.

In adjudicating this matter I note that I have insufficient evidence to conclude that the Landlord had written authorization to retain any portion of the Tenant's security deposit.

There is a general legal principle that places the burden of proving that a damage or loss occurred on the person who is claiming compensation for that damage or loss. In these circumstances the burden of proving the Tenant's personal property was damaged rests with the Tenant, as it is the Tenant who is seeking compensation.

I find that the Tenant has submitted insufficient evidence to establish that his personal property was damaged as a result of an insect infestation. In reaching this conclusion I was heavily influenced by the absence of evidence to support the Tenant's submission that there was an insect infestation in the unit or that his property was damaged by that infestation.

I note that the only evidence that corroborates the Tenant's testimony that there were insects in the rental unit is a photograph that shows one insect on a carpet. I find that the presence of one single insect does not constitute an infestation.

As the Tenant has failed to meet the burden of proving that his property was damaged by an infestation in the rental unit, I dismiss his claim for \$3,699.00.

As the Tenant has failed to establish that there was an insect infestation in the rental unit I find that the Tenant has not established that he needed to vacate the rental unit as a result of an infestation.

Even if I concluded that the rental unit was entered without proper authority on three occasions, I would not find that the Tenant needed to vacate the rental unit on that basis. The appropriate response to such incidents would be to file an Application for Dispute Resolution seeking an Order for the Landlord to comply with the legislation whenever the Landlord wishes to enter the unit.

As the Tenant has failed to establish that he needed to vacate the rental unit, I dismiss his claim for moving costs of \$300.00.

Conclusion:

The Tenant has failed to establish the merits of his claim for compensation and I dismiss his Application for Dispute Resolution, with leave to reapply for a refund of his security deposit if necessary.

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 18, 2016

Residential Tenancy Branch