



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), for a monetary order double the security deposit, for money owed or compensation for damage or loss under the Act.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit?
Is the tenant entitled to monetary compensation for damages?

Background and Evidence

The parties agreed that the tenancy began on October 15, 2014. Rent in the amount of \$600.00. The tenant paid a security deposit of \$300.00.

The tenant claims as follows:

a.	Double the security deposit	\$ 600.00
b.	Compensation equal to one month rent	\$ 600.00
c.	Moving costs	\$ 300.00
d.	Cost of laundry	\$ 600.00
	Total claimed	\$2,100.00

Double the security deposit

The tenant testified that the landlord did not comply with section 38 of the Act. As the landlord was considered served with their forwarding address on the date they received a copy of the decision, which was made on March 7, 2016. Filed in evidence is a copy of the decision

The landlords acknowledged that they had the tenant's forwarding address and they received a copy of the previous decision. The landlords stated that they misunderstood the decision.

Compensation equal to one month rent

The tenant testified that they were not served with a notice to end tenancy by the landlord. The tenant stated that they were asked to leave because the landlord wanted to start a daycare. The tenant stated that they should be entitled to recover the equivalent equal to one month's rent for landlord's use of property.

The landlords testified that they did not ask the tenant to leave. The landlords stated it was the tenant that gave short notice to end the tenancy.

Moving costs

The tenant testified that they should be entitled to recover their cost of moving since it was the landlord that ended the tenancy.

The landlords testified that they did not end the tenancy and they are not responsible for the tenant's moving costs.

Cost of laundry

The tenant testified that during their tenancy the laundry facilities were restricted and they had to use services elsewhere.

The landlords testified that the tenant was given certain days that they were allowed to use the laundry facilities. The landlords stated if the tenant chose to do their laundry elsewhere that was their choice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Double the security deposit

The parties participated in a dispute resolution hearing on February 25, 2016. The tenant's application for return of the security deposit was dismissed with leave to reapply.

At that hearing the Arbitrator determined that the landlord had received the tenants' forwarding address and must comply within the Act, upon receipt of the decision. The filed number has been noted on the covering page of this decision which is dated March 7, 2016.

Section 38(1) of the Act states, except as provided in subsection (3) or (4) (a), **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 do one of the following**: repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this case, I accept the evidence that landlords had the tenants forwarding address in March 2016. The landlords did not return the security deposit or make an application for dispute resolution claiming against the security deposit. I find the landlords have breached 38(1) of the Act.

The security deposit is held in trust for the tenant by the landlords. At no time do the landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlords may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlords did not have any authority under the Act to keep any portion of the Deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenant the sum of **\$600.00**, comprised of double the security deposit (\$300.00).

Compensation equal to one month rent

In this case, the evidence of the tenant was that they are entitled to the amount equivalent to one month rent as the landlord told them that they had to move as they wanted the rental unit to start a daycare. The evidence of the landlords was that they did not ask the tenant to vacate. The evidence of the landlords was that the tenant ended the tenancy with insufficient notice.

In this case, I accept the landlords' evidence over the tenant's evidence, that the tenant gave insufficient notice to end the tenancy. I find the tenant not to be credible on this issue as the tenant filed a witness statement in evidence that states,

"I ML confirm that I was present with tenant ... on July 20, 2015, during when she served the "Notice to End Tenancy" document to her landlord's address. The document was taped to the landlord's door."

[Reproduced as written.]

In light of the above I dismiss this portion of the tenant's claim. **The tenant is cautioned** providing false evidence or documentary evidence could have serious consequences.

Moving costs

The evidence supports the tenant ended the tenancy and vacated the rental unit. The tenant is responsible for their own moving costs. Therefore, I dismiss this portion of the claim.

Cost of laundry

In this case, I accept the landlords' evidence over the tenant's evidence that the tenant was given access to the laundry facilities on specific dates. I find it unreasonable that the tenant only made this claim after the tenancy had ended.

Further, as I have found the tenant not credible, I find it more likely than not that the tenant is fabricating a claim as they provided no documentary evidence to support it. Therefore, I dismiss this portion of the claim.

I find that the tenant has established a total monetary claim of **\$600.00** comprised of the above described amount. I grant the tenant an order under section 67 of the Act for the above amount.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for return of double the security deposit. The balance of their claim is dismissed without leave to reapply.

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: February 23, 2017

Residential Tenancy Branch

