



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for a monetary order for double the return of his security deposit under the *Act*, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant, the landlord and the daughter of the landlord attended the teleconference hearing and provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

Issue to be Decided

- Is the tenant entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on June 1, 2007 and ended on November 30, 2014. The tenant paid a \$550.00 security deposit at the start of the tenancy.

The parties agreed that the tenant provided his written forwarding address to the landlord via letter dated March 16, 2015 and was received by the landlord on March 19, 2015. The parties also agreed that the tenant did not give the landlord permission to retain any portion of the security deposit and the landlord confirmed that they did not submit an application to claim against the tenant's security deposit under the *Act*.

The landlord confirmed that he continues to hold the tenant's security deposit and has not returned any amount of the tenant's security deposit.

Regarding the remainder of the tenant's claim, the tenant confirmed that he did not submit receipts or other documentation to support the items or value of the personal items he left behind in the rental unit. In addition, other than a photo of a mattress, the tenant did not submit or present any photo evidence to support his claim for his personal items. Regarding the mattress, the landlord testified that the mattress was left outside of a period of time which resulted in the mattress having no value. The tenant also confirmed that he did not have tenant contents insurance to protect his personal items during the tenancy. The landlord testified that it cost him money to dispose of the personal items left behind by the tenant and that he assigned no value to the personal items at all. The landlord submitted 35 photos in evidence and testified that the items were considered garbage of disposed of after the tenant vacated. As a result, the personal items portion of the tenant's monetary claim was dismissed due to insufficient evidence during the hearing.

Analysis

Based on the above, the evidence of the parties, and on a balance of probabilities, I find the following.

Tenant's claim for the return of double the security deposit – There is no dispute that the landlord received the tenant's written forwarding address as of March 19, 2015. There is also no dispute that the tenant did not provide the landlord permission to retain any amount of the security deposit and that the landlord did not submit an application to claim towards the security deposit.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an arbitrator, or the written agreement of the tenant. In the matter before me, I find the landlord did not have any authority under the *Act* to keep any portion of the security deposit and did not return the full security deposit to the tenant within 15 days in accordance with the *Act*. Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[my emphasis added]

In the matter before me, I find that the landlord breached section 38 of the *Act* by failing to return the tenant's security deposit in full to the tenants within 15 days of March 19, 2015 having not made a claim towards the security deposit, and by not having the written permission of the tenant to retain any portion of the security deposit.

Given the above, I find the tenant is entitled to the return of double the original security deposit of \$550.00 for a total of **\$1,100.00**. The tenant has also earned interest on the original security deposit, which does not double under the *Act*, in the amount of **\$13.16**.

In addition, as the tenant's application had merit, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$100.00**.

As a result of the above, I will add \$13.16 for the security deposit interest, plus \$100.00 for the recovery of the cost of the filing fee pursuant to section 72 of the *Act* to the

\$1,100.00 monetary award leaving a total amount owing by the landlord to the tenant in the amount of **\$1,213.16**.

As described above, I dismiss the remainder of the tenant's application for the cost of his personal items due to insufficient evidence. I also note that the landlord is not the tenant's insurer and that it is the responsibility of the tenant to properly insure their contents during a tenancy.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **\$1,213.16** as described above. Therefore, I grant the tenant a monetary order pursuant to section 67 of the *Act* in the amount of \$1,213.16 owing by the landlord.

I caution the landlord to comply with section 38 of the *Act* in the future.

Conclusion

The tenant's application is partially successful.

The tenant has established a total monetary claim in the amount of \$1,213.16 as described above. The tenant has been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$1,213.16 owing by the landlord. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: March 3, 2017

Residential Tenancy Branch