



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 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*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 1:48 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant provided sworn, undisputed testimony that he had personally served the landlord with his application for dispute resolution hearing package ("Application") and evidence on February 2, 2017. The tenant provided sworn, undisputed testimony that he had served the landlord with an amendment to his application by registered mail on February 8, 2017. The tenant provided the tracking information in his evidence. In accordance with sections 89 and 90 of the *Act*, this amendment was deemed served to the landlord on February 13, 2017, the fifth day after its registered mailing. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the Application, amendment, and evidence.

Issues(s) to be Decided

Is the tenant entitled to the return of his security deposit pursuant to section 38 of the *Act*?

Is the tenant entitled to monetary compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67?

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

Background and Evidence

The tenant provided the following sworn, undisputed testimony as the landlord did not attend the hearing. This month-to-month tenancy began on July 15, 2016, with monthly rent set at \$1,600.00. The landlord had collected a security deposit of \$800.00 from the tenant, and still continues to hold that deposit. The tenant moved out on December 31, 2016. The tenant provided his forwarding address to the landlord in writing on November 23, 2016 when he gave written notice to the landlord that he was ending this tenancy. A copy of this letter was submitted in the tenant's evidence.

The tenant testified that he had not received any portion of his security deposit from the landlord. The tenant testified that he did not give permission for the landlord to retain any portion of his deposit.

The tenant is also seeking monetary compensation equivalent to two months' rent for the landlord's breach of sections 28 and 29 of the *Act*. The tenant testified that he discovered missing items from the residence such as toilet paper and \$40.00 in change. The tenant submitted in evidence video and audio recordings that supported his testimony that the landlord had entered his suite without his permission and knowledge. The tenant's video evidence showed that the landlord had entered his suite on November 1 and 2, 2016, both times without his permission. The tenant submitted in evidence audio recordings of the tenant confronting the landlord about the authorized entry, which the landlord did not dispute. The landlord provided the tenant with the explanation that he had entered the suite to access the fuse box.

The tenant testified that the landlord had also accessed his secured wireless internet connection without his permission. The tenant had noticed in his router logs that an unknown address had logged in on his device. The tenant confronted the landlord, which recorded in his audio evidence for this hearing.

The tenant is also seeking monetary compensation for his moving expenses totalling \$266.44. The tenant provided an invoice from the moving company dated January 5, 2017 for a move on December 30, 2016.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to

retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord has not returned the tenant's security deposit within 15 days of the end of this tenancy, December 31, 2016. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave undisputed sworn testimony that the landlord had not obtained his written authorization at the end of the tenancy to retain any of the security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit

The tenant also provided undisputed sworn evidence in this hearing that the landlord had entered his suite without his permission on least two occasions. The tenant provided supporting video and audio evidence to show that the landlord did not comply with section 29 of the *Act*, which prohibits the landlord's right to enter the rental suite except with proper notice or the tenant's permission. When confronted by the tenant, the landlord stated that he was there to access the fuse box, which does not comply with section 29(f) of the *Act*, which allows the landlord to enter the suite where "an emergency exists and the entry is necessary to protect life or property". The tenant also testified that the landlord had accessed his secured wireless internet connection without his permission, and provided evidence to support the unauthorized access. The tenant ended the tenancy shortly afterwards, and incurred moving expenses to do so

I find that the tenant established in his application that the landlord did not comply with sections 28 and 29 of the *Act*. Accordingly I find that the tenant is entitled to monetary compensation for the losses that he had incurred as a result of these breaches. The tenant requested compensation for his moving expenses, as well as the equivalent of two month's rent. Although I find that the tenant is entitled to some compensation, the tenant did not provide sufficient justification for why he should be compensated the equivalent of two month's rent. As the tenant did establish that the landlord entered his suite on at least two occasions within the month of November 2016, I find that the tenant is entitled to some compensation. Accordingly the tenant will be compensated \$800.00 for half a month's rent, plus the \$266.44 in moving costs.

As the tenant has been successful in his application, I find that the tenant is also entitled to recover the filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms which allows the tenant to recover the original security deposit, plus a monetary award equivalent to the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. The tenant is also granted monetary compensation for the landlord's failure to comply with sections 28 and 29 of the *Act*, plus \$100.00 for recovery of the filing fee for this application.

Item	Amount
Return of Security Deposit	\$800.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	800.00
Monetary Compensation for Landlord's Failure to Comply with s. 28 & 29 of the <i>Act</i>	800.00
Moving Fees	266.44
Recovery of Filing Fee	100.00
Total Monetary Order	\$2766.44

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: April 24, 2017

Residential Tenancy Branch