



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD FF

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (the "Application") seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for the return of his security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of two months of pre-paid rent, for the cost of emergency repairs, and to recover the cost of the filing fee.

The tenant, the tenant's legal counsel, and the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties presented evidence. 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.

Issues to be Decided

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

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on October 15, 2016 and was scheduled to end at noon on October 14, 2017. Monthly rent in the amount of \$1,050.00 was due on the 15th day of each month. A security deposit of \$525.00 was paid by the tenant at the start of the tenancy. The tenant vacated the rental unit on November 24, 2016.

The tenant has submitted the following monetary claim of \$4,498.94 comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Pre-paid rent and deposit	\$2,625.00
2. Inspect/repair dishwasher	\$126.81
3. Repair/improve grounds	\$1,747.13
TOTAL	\$4,498.94

A copy of the tenant's written forwarding address was not submitted in evidence. The tenant's counsel stated that he wrote to the landlord to advise of a claim against the landlord in a letter marked "without prejudice". The tenant's counsel stated that in the letter, which was not submitted in evidence, the tenant would like to have "this dealt with through his office" being his counsel's office. The tenant's counsel confirmed that the letter did not specifically state that the tenant was seeking the return of his security deposit to be mailed to a specific address. The tenant's counsel made the argument that the letter implies that the landlord is to send the tenant's security deposit to the legal counsel's office address.

The tenant was asked why he vacated the rental unit after less than one and a half months. The tenant testified that the house was "infested with rats", however there was no documentary evidence submitted showing rats including no photos of rats or video of rat infestation. The tenant claims that he called the landlord two or three days after moving in about rats but was unable to provide a specific date. He claims it was by phone or by text but that he did not write a letter to the landlord to follow up on his concerns about rats. The tenant claims that he only spent 10 nights in the home. The landlord did not agree with the tenant.

Regarding item 1, the tenant has claimed \$2,625.00 comprised of two months of pre-paid rent of \$1,050.00 times two months for a total of \$2,100.00 for November and December 2016 inclusive. The tenant is also seeking the return of his \$525.00 security deposit. A copy of the tenant's written forwarding address was not provided in evidence and the landlord testified that she has not formally received the tenant's written forwarding address from the tenant.

Regarding item 2, the parties reached a mutually settled agreement in the amount of **\$126.81** regarding a dishwasher repair that the landlord agreed she was required to pay the tenant back for. As a result, the parties confirmed that they understood that item 2

was resolved by way of a mutually settled agreement and though a voluntary decision to agree, was final and binding once they agreed and that this matter would result in a monetary order for the tenant against the landlord.

Regarding item 3, the tenant has claimed \$1,747.13 for his personal costs to repair and improve the rental unit grounds. This item was dismissed in full during the hearing due to insufficient evidence submitted to support that the landlord had ever agreed to such an arrangement as part of the tenancy agreement. As a result, this item was dismissed without leave to reapply due to insufficient evidence.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

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.

Item 1 – I find that the tenant's application for the return of his security deposit is premature. I am not satisfied that the letter from the tenant's counsel specifically stated that the tenant was seeking that his security deposit be returned to his legal counsel and that the tenant's legal counsel's office address was the tenant's written forwarding address. While the tenant's counsel made the argument that the landlord should have known to send the tenant's security deposit to his legal counsel's office address, I disagree. Therefore, I dismiss this portion of the tenant's application with leave to reapply as I find the tenant has yet to formally provide his written forwarding address to the landlord in writing seeking the return of his security deposit to a forwarding address of the tenant as required by section 38 of the *Act*. I note that this decision does not extend any applicable timelines under the *Act*.

Regarding the tenant's claim for the return of his pre-paid rent for November and December of 2016, I find the tenant has provided insufficient evidence to support his claim for the return of his pre-paid rent for November and December of 2016. The tenant confirmed he did not write a letter to the landlord regarding his allegation of rats and there is no documentary evidence of rats before me to support that he complied with section 45(3) of the *Act* which requires the tenant to provide the landlord reasonable time to address any allegations of a breach of a material term by the landlord. Furthermore, I find the tenant's testimony to be vague as he could not recall specific dates in which is communicated with the landlord and could not recall whether it was a phone call or a text. Therefore, I find the tenant has provided insufficient evidence to support his claim and that by his own actions, the tenant breached section 45(2) of the *Act* by breaching a fixed term tenancy contrary to the *Act*.

I caution the landlord not to request or accept pre-paid rent in the future as the *Act* does not provide for such. I note that in the matter before me; however, that the tenant breached the fixed term tenancy based on the tenant's own actions and that as a result has failed to meet the burden of proof for the return of November and December 2016 pre-paid rent.

Item 2 – As described above and pursuant to section 63 of the *Act*, the parties voluntarily reached a mutually settled agreement for item 2 in which the landlord agreed to pay the tenant **\$126.81** for a dishwasher repair. As a result, the parties are reminded that item 2 is enforceable and that the parties confirmed that they were aware that such an agreement would be final and binding on the parties. Therefore, pursuant to section 63 of the *Act* I grant the tenant a monetary order under section 67 of the *Act* in the amount of \$126.81 by mutually settled agreement. The landlord should immediately pay the tenant \$126.81 unless she has done so already since the hearing date of May 31, 2017.

Item 3 – As indicated above, this portion of the tenant's claim has been dismissed in full as I find the tenant has failed to prove parts one and two of the test for damages or loss. I do not grant the tenant leave to reapply for this portion of their monetary claim as a result.

As the only portion of the tenant's claim that was successful was by mutual agreement, I do not grant the tenant the recovery of the cost of the filing fee under section 72 of the *Act*.

Conclusion

The tenant's application for the return of his security deposit is premature and is dismissed, with leave to reapply.

Item 2 was resolved by way of a mutually settled agreement between the parties. The tenant is granted a monetary order in the amount of \$126.81 as a result and pursuant to sections 63 and 67 of the *Act*. The parties confirmed that they understand that a mutually settled agreement was binding on the parties and would be an enforceable agreement under the *Act*. Should the landlord fail to pay the tenant as agreed, the tenant must serve the landlord with the monetary order. Should the tenant require enforcement of the monetary order, the monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The remainder of the tenant's claim is dismissed without leave to reapply.

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: June 19, 2017

Residential Tenancy Branch