



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord acknowledged receipt of evidence submitted by the tenant. The landlord did not submit any documentation for this hearing.

Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double 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*?

Is the tenant entitled to a monetary award for compensation for loss or damage under the *Act, regulation* or tenancy agreement?

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

Background, Evidence

The tenant's testimony is as follows. The tenancy began on August 31, 2016 and ended on November 30, 2016. The tenant testified that the tenancy was to be for a

fixed term of one year but the tenant left early as he felt the landlord was not abiding by the tenancy agreement. The tenant testified that he is seeking the return of his three months of rent in the amount of \$4200.00. The tenant testified that the reason he wants all his rent returned is because the landlord was restrictive in only allowing them to do laundry two days per week, the internet was available intermittently, the heat didn't work properly, and that the landlord became restrictive in the off street parking and the landlords neglect in not repairing items in the unit.

The tenant testified that many of these items were verbally agreed to and that the landlord "breached the terms". The tenant testified that on November 11, 2016 the internet connection was down again and that he had had enough and gave notice that he would be moving out by the end of the month. The tenant testified that he is also seeking the return of his security deposit. The tenant testified that he agreed to a \$15.00 reduction for a broken light fixture cover but was only given \$183.01 back. The tenant is seeking the remaining \$501.99 of his deposit.

The landlord gave the following testimony. The landlord testified that the tenant left the unit damaged and dirty and that he "broke the lease" early and moved without proper or sufficient notice. The landlord testified that there was only one disagreement between the two parties and that occurred on November 11, 2016. The landlord testified that the tenant got upset and gave short notice about the internet not working. The landlord testified that the internet was the same one he used yet he had no difficulties. The landlord testified that the parking was never promised to the tenant. The landlord testified that the heat was working at all times and that the tenant always left their windows open because it was so warm. The landlord testified that the tenant was given access to the laundry twice per week as agreed to. The landlord testified that the tenant shouldn't get any compensation and that the \$183.01 of the deposit that has been returned is enough.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Firstly I deal with the tenants claim for \$4200.00 compensation as follows.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act,**

the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. The applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant has failed to satisfy me that he has provided sufficient evidence to satisfy any of the four grounds listed above as required under section 67 of the *Act*. Based on the insufficient evidence before me, I must dismiss this portion of the tenants claim.

Finally, I deal with the tenants claim for the return of the deposit as follows.

Section 38 (1) says that 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.

And Section 38 (6) says 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.**

The landlord testified that he did not file an application for dispute resolution or have the tenant's authorization to withhold the security deposit save and except for \$15.00 for the light fixture cover. Taking the agreed upon reduction into account and based on Section 38 of the *Act* as noted above, I find that the tenant is entitled to the doubling provision

as outlined and as follows; $\$685.00 \times 2 = \1370.00 minus the $\$183.01$ already received for a total of $\$1186.99$.

The tenant is also entitled to the recovery of the $\$100.00$ filing fee.

Conclusion

The tenant has established a claim for $\$1286.99$. I grant the tenant an order under section 67 for the balance due of $\$1286.99$. This order may be filed in the Small Claims 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: July 11, 2017

Residential Tenancy Branch