



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, RPP, 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 the security deposit pursuant to section 38;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he was served with the tenant's application for dispute resolution dated February 2, 2017 on February 27, 2017 after it was sent by registered mail on February 17, 2017. The landlord said that the application was not served within the 3 days required under the *Act* and the Residential Tenancy Branch Rules of Procedure 3.1. Although I find that the tenant served the landlord outside of the 3 days required, the landlord confirmed that he did receive the tenant's application for dispute resolution and was notified of this hearing. Based on the sworn testimony of the parties, I find that the landlord has received the tenant's dispute resolution hearing package and that there would be no denial of natural justice in proceeding with this hearing and considering the tenant's application.

The landlord disputed receipt of the tenant's evidentiary materials. The tenant testified that he sent the landlord a copy by registered mail and provided a Canada Post tracking number as evidence of service. The landlord testified that the only material delivered under the tracking number provided was the tenant's application for dispute resolution. As the landlord stated that they had not received the tenant's written evidence, I advised the parties that I would only be able to consider those pieces of evidence included in the tenant's materials which the landlord confirmed having received on prior occasions. I have taken this approach after considering the guidance provided by Rule 3.17 of the Rules of Procedure.

During the hearing the tenant withdrew the portion of the application seeking a return of personal property stating that it was checked off on the original application form in error. The portion of the tenant's application seeking a return of personal property is withdrawn.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

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

Background and Evidence

The parties agreed on the following facts. The tenancy began in 2011. The monthly rent for this tenancy was \$655.00. The tenant paid a security deposit of \$315.00 at the start of the tenancy which is still held by the landlord. The tenant testified that he paid an additional deposit for electricity utilities of \$100.00 at the start of the tenancy. The landlord testified that they have no records of any such deposit being requested or collected.

There was a fire in the rental building on February 6, 2015. As a result of the fire the rental building was no longer inhabitable. The tenant was only provided brief access to the rental unit but was unable to collect all personal items. The tenant testified that after vacating the rental unit he communicated with the landlord by phone, text and correspondence. The tenant said that he issued a text and letter on February 24, 2015 in which he demanded the return of the deposits paid for this tenancy. The tenant said that he did not provide a forwarding address where the deposits should be sent. The tenant testified that he did not provide the landlord with a forwarding address until 2017 when he filed his application for dispute resolution.

The tenant is claiming for a return of \$205.00 for rent paid in February, 2015. The tenant testified that he has already received a payment of \$425.00 from the landlord and is seeking the balance of the rent paid for that month which he calculates as \$205.00. The landlord testified that the tenant only paid \$500.00 for the February rent and his tenancy was in arrears at that time. The landlord said that there is no additional amount owing to the tenant.

The tenant claims for the cost of replacing some paperwork which he said he was not able to retrieve as he was only allowed limited access to the rental unit after the fire. The tenant also claims for some of the costs of pursuing the present application including postage and use of sites to determine the landlord's mailing address.

Analysis

I accept the evidence of the parties that there was a fire in the rental building on February 6, 2015. I find that the tenancy agreement was frustrated as the rental building was no longer inhabitable. Residential Tenancy Policy Guideline 34 provides that:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

I find that the tenancy agreement was frustrated as of February 6, 2015 and the tenancy ended on that date.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. However, section 39 of the *Act* provides that despite any other provisions in the *Act*, if a tenant does not provide the landlord with a forwarding address in writing within one year after the end of the tenancy the landlord may keep the security deposit.

I accept the undisputed evidence of the parties that the tenant did not provide a forwarding address in writing to the landlord until 2017 when he filed his application for dispute resolution. I accept the tenant's testimony that while a return address was provided in a letter sent on February 24, 2015, it was not identified as a forwarding

address nor was it intended to be used as a forwarding address. Accordingly, I find that as the tenant did not provide a forwarding address within one year of the end of the tenancy the landlord is entitled to retain the security deposit.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

The tenant seeks a monetary award of \$205.00, what he calculates as the outstanding amount that should be refunded for the monthly rent paid in February, 2015. I accept the parties' evidence that the landlord has already refunded the amount of \$425.00 to the tenant. I accept the landlord's testimony that the tenant failed to pay the full amount of rent owing for that month and only paid \$500.00. I accept the evidence of the parties that the tenant occupied the rental unit for the first 6 days of February until the tenancy was frustrated. I find there is insufficient evidence to support the tenant's claim for an additional refund of rent paid in February, 2015.

I find there is insufficient evidence that an electrical utility deposit was paid by the tenant. The tenant testified that a deposit of \$100.00 was paid. The landlord disputed this deposit and testified that there were no records of this payment. I find that the tenant has not met the onus of showing on a balance of probabilities that there was a utility deposit paid. Consequently, I dismiss this portion of the tenant's application.

I find there is insufficient evidence in support of the tenant's claim for replacement of documents or filing the present application. I find that there is insufficient evidence that the landlord was in breach of the *Act*, regulation or tenancy agreement by preventing the tenant from freely accessing the rental unit after a fire in the building. I accept the evidence of the tenant that he was provided with a subsequent opportunity to gather some materials from the rental unit. I find that there is insufficient evidence to show that the landlord was in breach of the *Act*, regulations or tenancy agreement such that the tenant is entitled to monetary compensation for any loss. Accordingly, I dismiss this portion of the tenant's application.

As the tenant's application was not successful I find that the tenant is not entitled to recover the filing fee for this application.

Conclusion

The tenant's application is dismissed.

The landlord is authorized to retain the security deposit for this tenancy.

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 14, 2017

Residential Tenancy Branch