



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD

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;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

The tenant attended the hearing via conference call and provided undisputed affirmed evidence. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlords were served with the notice of hearing package via Canada Post Express Post Mail with a signature requirement on February 3, 2017 and has provided a copy of the Canada Post Customer Receipt Tracking number and a copy of an online search of the Canada Post website confirming this. The tenant also stated that the package for V.N. was received on February 8, 2017 and the package for M.N. was returned as "unclaimed". The tenant also stated that the submitted documentary evidence was served to the landlords via Canada Post Express Post Mail with a signature requirement on June 25, 2017. The landlord confirmed that this package was sent to the same address, but was returned as "unclaimed". I accept the undisputed affirmed evidence of the tenant and find that although only one of the two landlords received the notice of hearing package, I find that the landlords have been sufficiently served and are deemed served 5 days later on February 8, 2017 as per section 90 of the Act. I also find that the landlords are deemed served with the submitted documentary evidence even though the package was "unclaimed" 5 days later on June 30, 2017.

After lengthy discussions with the tenant, the tenant clarified that his monetary claim was amended lowering the amount to \$1,100.00 from the original \$1,375.00.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for the cost of emergency repairs, for money owed or compensation for damage or loss and return of the security deposit?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on May 15, 2014 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$550.00 payable on the 1st day of each month. A security deposit of \$275.00 was paid.

The tenant seeks a monetary claim of \$1,100.00 which consists of:

\$275.00	Return of Paid Rent, May 15 –June 5, 2015
\$275.00	Return of Original Security Deposit
\$550.00	Compensation for being illegally evicted.

The tenant clarified that from the period May 15 to June 5, 2015 the landlord did not allow the tenant to move in after paying the \$550.00 monthly rent. As such, the tenant seeks recovery of the pro-rated amount for a two week period totalling, \$275.00.

The tenant also seeks return of the original \$275.00 security deposit. The tenant provided undisputed affirmed evidence that the tenancy ended on January 31, 2015 and that the tenant provided his forwarding address in writing to the landlord in a handwritten note on January 31, 2015. The tenant also stated that this was followed up 1 year later in another written request via Canada Post Registered Mail on January 25, 2016.

The tenant seeks compensation of \$550.00 as a result of an illegal eviction. The tenant clarified that he received a hand written note dated January 1, 2015 from the landlord informing him that he would be evicted. The note states in part,

Due to circumstances you are required to move from the third floor to the room #206 on the second floor.

In support of these claims the tenant has provided:

A copy of the hand written eviction note

A copy of the tenant's request for return of the security deposit dated January 31, 2015

A copy of a hand written note dated January 30, 2015 from the landlord cancelling the tenant's eviction and request for the tenant to claim his rent.

A copy of the signed tenancy agreement dated June 5, 2014

A copy of the typed letter dated January 25, 2016 and a Canada Post Customer Receipt Tracking label, requesting the return of the security deposit.

A copy of a receipt dated May 15, 2014 for the \$275.00 security deposit

Analysis

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. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 60 of the Residential Tenancy Act states,

Latest time application for dispute resolution can be made

60 (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

(2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

I accept the undisputed affirmed evidence of the tenant. However, a review of the tenant's application shows that it was filed on February 1, 2017 and through the undisputed affirmed evidence of the tenant the tenancy ended on January 31, 2015. As such a finding cannot be made as the tenant has applied outside of the limitation period as provided under section 60 of the Act.

Conclusion

The tenant's application is dismissed.

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