



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:

- authorization to obtain a return of all or a portion of the security deposit, including double the amount, pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. The landlord did not attend this hearing, although I waited until 11:25 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The tenant testified that on June 30, 2017, he sent a copy of the Application for Dispute Resolution, including his Amended application and Notice of Hearing to the landlord by registered mail. A registered mail receipt and tracking number was provided in support of service.

Based on the above evidence, I am satisfied that the landlord was served with the both the original and Amended Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the landlord.

Issues

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Is the tenant entitled to a monetary award for compensation for loss?

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

Background and Evidence

The tenancy began on February 1, 2013 and ended on May 1, 2017. The tenant paid a security deposit of \$350.00 at the start of the tenancy which the landlord continues to hold.

The tenant is claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenant provided a registered mail receipt and a letter dated May 29, 2017 as proof of service of a forwarding address.

The tenant is also claiming an amount of \$2500.00 as a replacement cost for a treadmill that was left in the rental unit at the end of the tenancy. The tenant testified the movers were not able to disassemble the treadmill so it was left behind. The landlord has since denied access to the rental unit so he has not been able to retrieve it. The tenant originally applied for the landlord to return the personal property but then amended his claim seeking \$2500.00 in compensation to replace the treadmill. The tenant testified he originally purchased the treadmill at a discounted price of \$900.00 and the treadmill was a couple years old.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

I find the tenant did provide a forwarding address in writing to the landlord. The tenant's security deposit was not refunded within 15 days as required by section 38 of the Act and the doubling provisions of section 38 therefore apply.

I allow the tenants claim for return of the security deposit and award an amount of \$700.00, which is double the original security deposit of \$350.00.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Policy Guideline #16 "Compensation for Damage or Loss" provides the following guidance:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The tenant did not submit any receipts in support of the original purchase of the treadmill or any invoices/estimates of the claimed replacement cost of a similar treadmill. I find the tenant did not provide sufficient evidence to establish the value of the loss claimed. However, I do accept the tenant's testimony that the landlord did not take appropriate steps to return the tenant's personal property and as a result the tenant suffered a loss. I award the tenant the nominal amount of \$200.00 for this loss.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$1000.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$1000.00. 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: September 06, 2017

Residential Tenancy Branch