



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF, OLC, RPP

Introduction

This hearing dealt with application from both the landlord and tenant under the *Residential Tenancy Act* (the *Act*).

The landlord applied for

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied 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 that the landlord comply with the *Act*, regulations or tenancy agreement pursuant to section 62;
- 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.

The landlord did not attend this hearing which lasted 15 minutes. The tenant appeared and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that he served the landlord with his application for dispute resolution dated August 26, 2017 and evidence package on September 1, 2017 by registered mail. The tenant provided a Canada Post tracking number as evidence of service. Pursuant to sections 88, 89 and 90 of the *Act*, I find that the tenant's application package was deemed served on the landlord on September 6, 2017, five days after mailing.

Issue(s) to be Decided

is the landlord entitled to a monetary award for damages as claimed? Is the landlord entitled to retain all or a portion of the security deposit for this tenancy?

Is the tenant entitled to a monetary award for damages and loss as claimed? Is the tenant entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Should the landlord be ordered to return the tenant's personal property?

Is either party entitled to recover the filing fee for their application from the other?

Background and Evidence

The tenant provided undisputed testimony regarding the following facts. This periodic tenancy ended in April, 2017 when the tenant vacated the rental unit. A security deposit of \$950.00 was paid at the start of the tenancy and is still held by the landlord. The landlord and tenant conducted a visual inspection of the rental unit but no condition inspection report was prepared at either the start or end of the tenancy. The tenant testified that he believes he provided the landlord with a forwarding address in writing during the month of May, after vacating the rental unit.

The tenant claims the amount of \$8,000.00 for the loss of enjoyment suffered due to the tenancy. The tenant said that during the tenancy he and his family suffered considerable stress caused by the landlord. The tenant submitted into written evidence copies of correspondence with the landlord as evidence of the conflicts between the parties.

The tenant claims the amount of \$14,400.00 for the cost of preparing for the present application. The tenant said that he estimates, going through documents, printing

copies and putting them in a binder took over 90 hours of his time. The tenant said that his hourly rate in his employment is \$160.00 and calculates that the time spent preparing should be valued at \$14,400.00.

Analysis

The landlord did not attend the hearing which was scheduled by conference call at 1:30pm. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Consequently I dismiss the landlord's application without leave to reapply.

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.

I find that there is insufficient evidence that the tenant has suffered damage or loss as a result of the landlord's violation. I accept the undisputed evidence of the tenant that he suffered aggravation and stress during this tenancy. However, I find that the evidence submitted is insufficient to find that there was a violation of the *Act*, regulations or tenancy agreement that gives rise to a claim. Therefore, I dismiss this portion of the tenant's application.

The costs of preparing an application for dispute resolution are not an expense that is recoverable under the *Act*. Accordingly, I dismiss the tenant's application to recover the costs that the tenant says he incurred in preparing for the hearing.

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. If that does not occur, the landlord must pay a monetary award, pursuant to

section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the tenant's undisputed evidence that the tenant provided written notice of the forwarding address during the month of May, 2017.

Furthermore, the tenant testified that no condition inspection report was prepared at either the start or end of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I find that the landlord has extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy in accordance with the *Act*.

Based on the undisputed evidence before me, I find that the landlord had extinguished their right to apply to retain the security deposit for this tenancy and has failed to return the tenant's security deposit in full. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a \$1,900.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

The tenant did not submit any evidence regarding the tenant's personal property that the landlord should be ordered to return. Consequently, I dismiss this portion of the tenant's claim.

As the tenant's application was not wholly successful I find it appropriate to issue an order that the tenant recover half of the filing fee in the amount of \$50.00 from the landlord.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,950.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. 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.

The landlord'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: October 3, 2017

Residential Tenancy Branch