



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNSD, FF, MNDC

Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* ("Act") the landlord applied for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

The tenant applied 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.

Only the tenant appeared at the hearing. The tenant provided affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The tenant testified and supplied documentary evidence that he served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on May 10, 2017. The tenant had provided tracking information from Canada Post indicating the mail had been signed for on May 12, 2017. I find the Landlord has been duly served in accordance with sections 89 and 90 of the Act. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

The landlord chose not to submit any documentation or participate in this hearing; accordingly, I dismiss the landlords' application in its entirety without leave to reapply.

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 order 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 tenants' testimony is as follows. The tenancy began on May 1, 2011 and ended on December 31, 2016. The tenants were obligated to pay \$1025.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$500.00 security deposit. The tenant testified that he and the landlord split the utilities cost equally as per their tenancy agreement. The tenant testified that he provided the landlord his forwarding address in writing in February 2017. The tenant testified that the landlord owes him \$110.00 for utilities, double the deposit (\$1000.00) for not returning it within fifteen days and \$100.00 for the filing fee.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant, 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.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, 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, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant did not provide documentation such as the tenancy agreement to reflect the arrangement in regards to the utilities. Based on the insufficient evidence before me I dismiss this portion of the tenants claim.

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

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.

The tenant did not provide a copy of the letter that he “thinks” he sent to the landlord in February 2017. In addition, the tenant was unclear and unable to recall specifically when and in what manner the landlord was served his forwarding address. Based on the tenants’ uncertainty and ambiguity in their testimony; he has not provided sufficient evidence that the landlord was provided his forwarding address in writing prior to filing an application to have this hearing. In the result, I find that the doubling provision under Section 38 of the Act does not apply.

The tenant is entitled to the return of his original \$500.00 security deposit. The tenant provided documentation to support this claim. The tenant is also entitled to the recovery of the \$100.00 filing fee for this application.

Conclusion

The tenant has established a claim for \$600.00. I grant the tenant an order under section 67 for the balance due of \$600.00. 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: October 11, 2017

Residential Tenancy Branch