



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Canadian National Relocation Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to return double the security deposit - Section 38;
3. An Order for the Landlord’s compliance with the tenancy agreement or Act - Section 63; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. I accept the Tenant’s evidence that each named Landlord was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on June 2, 2017 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlords are deemed to have received the Materials on June 7, 2017.

The Tenant was given full opportunity to be heard, to present evidence and to make submissions. As the tenancy has ended and as an order for the Landlord’s compliance is only relevant to an ongoing tenancy I dismiss the Tenant’s claim for such an order.

Issue(s) to be Decided

Is the Tenant entitled to the moving costs claimed?

Is the Tenant entitled to return of double the security deposit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy of a furnished unit started on April 26, 2016 on a fixed term to end April 30, 2017. At the end of the fixed term the Tenant was required to move out of the unit. During the tenancy rent of \$7,000.00 was payable on the first day of each month and, at the Landlord's request, the Tenant paid the rent every 6 months in advance. At the outset of the tenancy the Landlord collected \$3,500.00 as a security deposit. On May 16, 2017 the Tenant provided its forwarding address to the Landlord by text and the Landlord replied confirming receipt of the address. The Landlord returned \$2,475.80 of the security deposit to the Tenant by mail posted May 16, 2017. The Tenant did not agree to any deductions. The Tenant claims return of double the security deposit.

Two months prior to the end of the term the Tenant was contacted by a person who had been with the Landlord when the unit was originally viewed. This person informed the Tenant that the owners wished to renew the tenancy at a monthly rental rate of \$6,300.00. The Tenant agreed to these terms in reply. The next day the Tenant was contacted by the Landlord who stated that the owners now want \$7,000.00 per month for rent. The Landlord also informed the Tenant that there would be no final determination of the tenancy renewal for another month. After further communication with the Landlord the Tenant began to feel suspicious that things were not right so the Tenant did not accept the offer to renew and found another unit starting April 1, 2017. The Tenant believes that fraud was involved with this tenancy. The Tenant states that texts or other documentary evidence of the offers were provided as evidence however I note that no such evidence has been provided other than the one paragraph submission of the Tenant. This submission states that "there are additional issues related to the improper way my lease was terminated and by the interference with a favorable renewal

option that was presented to me by the owner's legal representative, but rejected by (the Landlord) without authority to do so."

The Tenant argues that as the Tenant had agreed to the offer of \$6,300.00 to renew the tenancy and as the Landlord breached the initial agreement to renew the tenancy, the Tenant was forced to find another unit. The Tenant states that given the short turn around and a requirement to be in the same area for his son, the Tenant was forced to accept an unfurnished tenancy. As a result of this the Tenant had to ship his furniture from out of country and the Tenant claims the shipping costs of \$11,167.39.

The Tenant paid the rent at both places for April 2017 and was in and out of the unit that month to clean and do laundry. On April 26, 2017 the Tenant discovered that the locks had been changed at the unit. The Tenant then went to the concierge and was introduced to the owners of the unit who were very apologetic and informed the Tenant that his Landlord was actually the owner's tenant. The owners allowed the Tenant back into the unit to retrieve that last of his belongings but refused to compensate the Tenant for the loss of the possession of the unit. The owners told the Tenant that he should seek compensation from the Landlord. The Tenant informed the Landlord immediately upon being locked out of the unit. The Tenant claims \$1,166.67 for the loss of the unit.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. I note that the Tenant's oral evidence was overall difficult to follow and required repeated clarification. The oral evidence in relation to the renewal offer was particularly confusing and disjointed. The supporting evidence of the offer to renew at \$6,300.00 was not provided as indicated by the Tenant at the hearing. As such I am left with the Tenant's written submission and I find that the person who made the first offer to renew the tenancy was not acting for the Landlord and there is no evidence that this person had any authority to make an offer on behalf of the Landlord. Even if this

person had the authority to make an offer on the rental unit for the Tenant's acceptance and a new contract could be determined, the Tenant has not named the owner or the owner's agent on this application and has not claimed any breach by the owner. As such I find that the Tenant has not substantiated that his Landlord breached a renewed tenancy agreement.

As the existing tenancy agreement required the Tenant to move out at the end of the tenancy and as the Tenant did not accept any offer from the Landlord to renew the tenancy I find on a balance of probabilities that the Tenant has not substantiated that the Landlord breached the tenancy agreement or the Act. As a result I find that the Tenant has not substantiated that the moving costs were incurred as a result of any breach by the Landlord. I therefore dismiss the claim for moving costs. As the Tenant was denied occupancy of the rental unit for a period when rent was paid, given the undisputed evidence that the Landlord was informed about this loss and as there is no evidence that the Landlord did anything to return the possession of the unit to the Tenant, I find that the Tenant suffered the loss claimed and is therefore entitled to **\$1,166.67.**

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the undisputed evidence that the Landlord did not return the full amount of the security deposit and did not make an application to claim against the security deposit I find that the Landlord must now pay the Tenant double the security deposit plus zero interest of **\$7,000.00.** Deducting the returned amount of **\$2,475.80** from this entitlement leaves **\$4,524.20** owed by the Landlord to the Tenant.

As the Tenant's application has met with some success I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$5,790.87**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$5,790.87**. If necessary, 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: November 09, 2017

Residential Tenancy Branch