



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

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 return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail on August 2, 2017. The tenant did not submit any documentary evidence. Both parties confirmed that the landlord served the tenant with his submitted documentary evidence via Canada Post Registered Mail. Neither party raised any issues with service. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Preliminary Issue

The tenant clarified that he was seeking a monetary claim for compensation under of \$2,800.00 pursuant to sections 49 and 51 of the Act, but stated that at no time was he served with a notice to end tenancy. Both parties confirmed in the that a mutual agreement to end tenancy was entered into on May 12, 17 to end the tenancy on June 15, 2017. As such, I find that as the landlord did not serve the tenant with a notice to end tenancy under the Act, that the tenant's request for compensation is dismissed.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

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.

Both parties provided affirmed testimony that there was a signed tenancy agreement in which the tenancy began on June 20, 2016 for a 1 year term ending on June 20, 2017. The monthly rent was \$2,800.00 payable on the 1st day of each month. Both parties confirmed that the landlord requested and the tenant paid a \$2,800.00 security deposit. Both parties were cautioned during the hearing that a security deposit must be limited to ½ of the monthly rent. Both parties confirmed that the tenancy ended on June 15, 2017 as per a mutual agreement to end the tenancy dated May 12, 2017.

The tenant seeks a monetary claim of \$5,700.00 which consists of:

\$2,800.00	Return of Original Security Deposit
\$2,800.00	Compensation, Fail to comply with Sec. 38
\$100.00	Recovery of Filing Fee

The tenant claims that the landlord was provided with the tenant's forwarding address in writing for the return of the security deposit on June 14, 2017 via email. The landlord disputed this claim stating that no forwarding address in writing was received. The tenant argues that the email was provided within the landlord's documentary evidence package on page 3. A review of the email confirms that the tenant did email his forwarding address in writing on an email dated June 14, 2017.

The landlord provided undisputed affirmed testimony that he holds the tenant's \$2,800.00 security deposit due to damage/repair issues as of the date of this hearing. The landlord confirmed that he did not receive the tenant's permission to retain the security deposit, nor did he make an application to dispute seeking to retain it against a claim for damages.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

I accept the undisputed evidence of both parties and find that a \$2,800.00 security deposit was demanded by the landlord and paid by the tenant.

I find based upon the landlord's submitted documentary evidence that the tenant did provide his forwarding address in writing via email to the landlord on June 14, 2017.

On this basis, I find that the landlord having received the tenant's forwarding address in writing failed to return it within the allowed 15 day timeframe. The tenant's application for return of the original \$2,800.00 security deposit is granted.

On the tenant's request for compensation under section 38 (6) of the Act, I find and accept the undisputed evidence of both parties that the landlord failed to gain permission from the tenant to retain the security deposit, nor did he make an application for dispute to retain the \$2,800.00 security deposit against a claim in damages. As such, the tenant's application for compensation is granted.

The tenant has established a total monetary claim of \$5,600.00.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$5,700.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the 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: January 30, 2018

Residential Tenancy Branch

