



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, OLC, FF

Introduction

On July 26, 2017, the Tenant submitted an Application for Dispute Resolution seeking a monetary order for the return of double the security deposit; for a monetary order for money owed or compensation for damage or loss under the Act, the regulations, or a tenancy agreement, and to recover the filing fee for the Application.

The matter was set for a conference call hearing. The Tenant appeared at the hearing; however, the Landlord did not. The Tenant testified that he served the Landlord with the Notice of Hearing and Application using registered mail sent on August 4, 2017. The Tenant testified that he sent the registered mail to the address that the Landlord provided to him for contact. The Tenant testified that the Landlord refused to pick up the registered mail. The Tenant provided copies of the registered mail tracking numbers and documents showing that the Landlord refused to accept the mail.

I find that the Landlord is attempting to avoid service of matters relating to the tenancy. I find that pursuant to sections 89 and 90 of the Act, the Landlord is deemed to have received the registered mail containing the Notice of Hearing.

The hearing process was explained and the Tenant was asked if they had any questions. The Tenant was provided the opportunity to present his evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

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

- Is the Tenant entitled to additional compensation?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant testified that the tenancy began on June 1, 2015. The Tenant testified that rent in the amount of \$2,700.00 was to be paid by the first of each month. The Tenant paid the Landlord a security deposit in the amount of \$1,350.00.

The Tenant testified that the Landlord ended the tenancy without issuing a proper notice to end tenancy. The Tenant testified that the Landlord phoned him and stated that he was moving back into the rental unit. The Tenant testified that he moved out on May 31, 2017. The Landlord never issued the Tenant a notice to end tenancy.

The Tenant testified that he provided his forwarding address in writing to the Landlord on June 1, 2017. The Tenant provided a copy of an email dated June 1, 2017, and a response from the Landlord dated June 11, 2017, showing that the Landlord received his forwarding address.

The Tenant testified that the Landlord did not return the security deposit or file a claim to keep it within 15 days of receiving his forwarding address in writing. The Tenant testified that the Landlord sent him an e-transfer on July 4, 2017, in the amount of \$90.00 but the Tenant refused to accept it.

The Tenant testified that there was no agreement that the Landlord could keep any amount of the security deposit.

The Tenant is seeking \$2,700.00 for double the amount of the security deposit.

The Tenant testified that the Landlord re-rented the unit out to new Tenants at a higher rent two months later. The Tenant is seeking compensation in the amount of two months' rent because the Landlord improperly ended the tenancy and re-rented the unit. The Tenant is seeking compensation of \$2,700.00 which is the amount of one month's rent.

Analysis

Section 44 A tenancy ends only if one or more of the following applies: (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [tenant's notice];
- (ii) section 46 [landlord's notice: non-payment of rent];
- (iii) section 47 [landlord's notice: cause];
- (iv) section 48 [landlord's notice: end of employment];

- (v) section 49 [landlord's notice: landlord's use of property];
- (vi) section 49.1 [landlord's notice: tenant ceases to qualify];
- (vii) section 50 [tenant may end tenancy early];
- (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant was under no legal obligation to move out of the rental unit on May 31, 2017. The Landlord did not issue a notice to end tenancy. The Tenant could have disputed the Landlord's stated intention to end the tenancy and move back into the unit. The Tenant chose to move out of the rental unit. I find that the tenancy ended when the tenant vacated the rental unit. I find that the Tenant is not entitled to compensation due to a breach of the *Act* relating to the Landlord's use of the rental property.

Section 38 (1) of the *Act* states 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 any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

I find that the Tenant provided his forwarding address to the Landlord on June 1, 2017, and that the Landlord was aware of the forwarding address as of July 11, 2017.

I find that the Landlord has failed to return the security deposit of \$1,350.00 to the Tenant.

There is no evidence before me that the Landlord applied for dispute resolution within 15 days of receiving the Tenant's forwarding address. I find that there was no agreement from the Tenant that the Landlord could retain the security deposit.

I find that the Landlord's breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenants double the amount of the security deposit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I order the Landlord to pay the Tenant the amount of \$2,800.00. I grant the Tenant a monetary order in the amount of \$2,800.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

Conclusion

The Landlords failed to return the security deposit to the Tenant in accordance with the legislation.

The Tenant is granted double the amount of the security deposit. I grant the Tenants a monetary order in the amount of \$2,800.00.

The Tenants claim for compensation in the amount of one month's rent is dismissed. No notice to end tenancy was issued and the Tenant chose to move out rather than dispute the end of the tenancy.

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: February 01, 2018

Residential Tenancy Branch