



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

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; and
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38.

Both parties attended the hearing and were given full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. I find that the landlord was served with the tenant's hearing package in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Background and Evidence

The parties agreed on the following facts. This tenancy began in February, 2017 and ended May, 2017. A security deposit of \$375.00 was paid at the start of the tenancy and is still held by the landlord.

The tenant submitted some of the pages of a written tenancy agreement into evidence. The tenancy agreement provides that the monthly rent is \$750.00 and due on the 22nd of each month. The tenancy agreement also provides that furniture is included in the rent. The parties testified that the monthly rent was raised to \$850.00 based on the number of occupants in the rental unit for March, 2017. The tenant gave evidence that the rent was raised unilaterally by the landlord but the landlord testified that the rent was agreed upon by the parties.

The parties gave evidence that the tenant has not provided the landlord with a forwarding address in writing prior to the date of the hearing. The tenant confirmed at the hearing that the address for service provided on the application for dispute resolution is the tenant's forwarding address.

The tenant seeks a monetary award of \$1,700.00, the equivalent of two month's rent at \$850.00. The tenant submits that he suffered loss of quiet enjoyment due to the landlord's actions. The tenant said that he did not know that the rental unit would be furnished and he had to incur time to pack the furniture supplied for the unit. The tenant testified that the landlord and her guests caused him disturbance throughout the tenancy. The tenant also mentioned other issues he found with the tenancy including appliances being turned off, and having to clean the rental unit at the start of the tenancy.

Analysis

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 is required to 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 authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a).

The tenant testified that he had not provided the landlord with a forwarding address in writing prior to the date of the hearing. Therefore, the landlord's obligation under the *Act* to return the tenant's security deposit had not started.

At the hearing the tenant testified that the address for service on the application for dispute resolution can be used as the forwarding address. As advised to the parties I

find that the tenant has served the landlord with the forwarding address in writing as of March 19, 2018. Pursuant to the Act, the landlord has 15 days from this date to apply for dispute resolution or return the tenant's security deposit.

I dismiss this portion of the tenant's application with 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 in support of the tenant's claim for a monetary award. I find that the tenant has not disclosed evidence that there has been a violation by the landlord which has resulted in damages or loss. While the tenant gave some evidence through testimony and written submissions regarding how he felt the tenancy was less than ideal, I find that it is insufficient to find that the landlord has violated the Act, regulations or tenancy agreement. I find the tenant's complaints to be minor and not supported in independent documentary evidence. For some of the complaints such as the issue of the rental unit being furnished, the tenancy agreement submitted into evidence shows that this was an agreed upon facet of the tenancy. I find the landlord's evidence that the monthly rent was amended to be \$850.00 due to the number of occupants to be more convincing than the tenant's testimony that it was raised unilaterally without notice. Taken in its totality, I find that the tenant has not met the burden of proof in showing that there has been any damage or loss which arises from a violation by the landlord.

Accordingly, I dismiss this portion of the tenant's application without leave to reapply.

Conclusion

The tenant's application with regards to the security deposit for this tenancy is dismissed with leave to reapply.

The balance of the tenant's application seeking a monetary award is dismissed without leave to reapply.

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: March 19, 2018

Residential Tenancy Branch