



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on April 18, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of the security deposit;
- A monetary order for compensation for loss or other money owed; and,
- Recovery of the cost of the filing fee.

Both the Landlord and the Tenant attended the hearing and provided testimony. The Landlord acknowledged receipt of the Tenant's evidence package, including the application and Notice of Hearing, around September 22, 2017. The Landlord submitted evidence to the Residential Tenancy Branch by fax on April 4, 2018. However, he also stated that he did not provide the Tenant with copies of this evidence. As discussed during the hearing, I will not consider this evidence, as it has not been served on the Tenant and exchanged in accordance with the rules of procedure.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to 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.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
2. Is the Tenant entitled to compensation for loss or money owed?
3. Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

Both parties agree that the Tenancy ended on August 31, 2017, and a move out inspection was done on that date. Both parties also agree that monthly rent was \$1,800.00 and that the Landlord used to hold a \$900.00 pet deposit and a \$900.00 security deposit. The Tenant stated that he allowed the Landlord to withhold \$450.00 for some drywall damage, and he was expecting \$1,350.00 back but only got \$1,300.00. So, the Tenant is asking for the remainder of his deposit in the amount of \$50.00. The Tenant stated that he did not provide his forwarding address in writing, other than by way of his application package and Notice of Hearing he served to the Landlord as part of this proceeding. The Tenant stated that he no longer lives at the address that was listed on his application, as it is his parents' house. The Tenant did not provide his new forwarding address during the hearing.

The Tenant is also seeking one month's compensation, pursuant to section 51 of the Act. The Tenant pointed out that the Landlord issued him a 2 Month Notice to End Tenancy (the Notice) on March 13, 2017, with an effective date of May 31, 2017. As such, the Tenant stated that he should be entitled to compensation equivalent to one month's rent which he never got. The Tenant stated that he was in a fixed term tenancy which expired at the end of August 2017, at which point it switched to a month-to-month tenancy.

The Tenant stated that when he received the Notice from the Landlord, he called the Residential Tenancy Branch to inquire about what his options were and he found out at that time that the Landlord could not end the tenancy with this type of Notice until the end of the fixed term tenancy. The Tenant stated he was made aware that the effective date of the Notice would auto-correct to reflect the end of the fixed term tenancy agreement, which was the end of August 2017. The Tenant stated that he paid rent right up until the end of his tenancy in August and never got any compensation from the Landlord.

The Landlord stated that he issued the Notice and subsequently realized that he could not end the tenancy until the end of the fixed term agreement. The Landlord stated that the tenancy agreement, which was provided into evidence by the Tenant, shows that the Tenant initialled next to the portion which stated he was required to vacate at the end of August 2017. The Tenant stated that he and the Landlord also initialled next to the part of the agreement which specifies that the tenancy will continue on a month-to-month basis after the end of August.

The Landlord stated that he realized he issued the Notice too early, and talked with the Tenant and told him to disregard the Notice. The Tenant disputes that this conversation occurred and stated he did not give his authorization for the Landlord to withdraw the Notice at any point.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, I find the Tenant did not properly provide his forwarding address to the Landlord. I note the Tenant said his address was listed on the application package he served to the Landlord. However, I do not find this is sufficient to satisfy the requirement that he provide his forwarding address in writing. Since the forwarding address was not properly provided from the Tenant to the Landlord, in writing, I dismiss the Tenant's application to have any remaining amount of the deposit returned to him, with leave to reapply.

Further, I note that the Tenant stated that he no longer resides at the address he had listed on the application, and I also note that no other forwarding address was provided during the hearing. As such, I decline to make any orders with respect to the return of the remaining security deposit, as I do not find the Landlord has been properly given the forwarding address in writing.

I find it important to note the following portion of the *Act*:

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing **within one year after the end of the tenancy**,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The Tenant remains at liberty to provide his forwarding address **in writing** (and not by way of an application for dispute resolution) to the Landlord, should he wish to obtain the remaining amount held by the Landlord. However, since the tenancy ended on August 31, 2017, the Tenant should keep in mind the time limits for providing the forwarding address, as specified above, and the Landlord should keep in mind the time limits prescribed under section 38(1) of the *Act*, should he be provided with the Tenant's forwarding address.

Next, I turn to the Tenant's request to obtain compensation based on the Notice, pursuant to section 51 of the *Act*. The Tenant pointed out that the Landlord issued him the Notice on March 13, 2017, with an effective date of May 31, 2017. Pursuant to section 53 of the *Act*, I find the effective date of the Notice is automatically corrected to reflect the end of the fixed term tenancy agreement (August 31, 2017). Regardless of whether or not the tenancy reverted to a month-to-month tenancy or whether the tenant was required to vacate at the end of the fixed term tenancy, I find the Landlord is obligated to compensate the Tenant, pursuant to section 51 of the *Act*, in the amount of \$1,800.00, which is equivalent to one month's rent. This amount is compensable upon the Tenant's receipt of the Notice. Furthermore, I find the Tenant vacated the rental unit in reliance on this Notice. I also note that the Landlord may not unilaterally withdraw this Notice without proper consent from the Tenant, which remains unproven.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was partially successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I find the Tenant is entitled to a monetary order in the amount of \$1,900.00.

Conclusion

The Tenant's application for return of the security deposit has been dismissed, with leave to reapply.

The Tenant is granted a monetary order pursuant to Section 67 in the amount of **\$1,900.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: April 20, 2018

Residential Tenancy Branch