



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This is an application by the tenant filed under the Residential Tenancy Act (the “Act”) for a monetary order for compensation for money owed and for return of double the security deposits (the “Deposit”).

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation under the Act?
Is the tenant entitled to a monetary order for return of double the Deposit?

Background and Evidence

The tenancy began on October 15, 2012. Rent in the amount of \$1,200.00 was payable on the 1 of each month. A security deposit of \$600.00 was paid by the tenant.

The tenant testified that they were given a Two Month Notice to End Tenancy for Landlord’s Use of Property, with an effective date of October 1, 2017. The tenant stated that they gave the landlord written notice that they were ending the tenancy earlier effective September 19, 2017. The tenant stated that they should be entitled to compensation from September 19 to October 1, 2017, based on the daily rent. The tenant seeks to recover the twelve days remaining in the total amount of \$494.00.

The tenant testified that they gave the landlord their forwarding address on October 3, 2017, by mail. The tenant stated that the landlord did not return the Deposit or make an application claiming against it. The tenant seeks the return of double the Deposit in the amount of \$1,200.00.

The landlord testified that they received the tenant notice to end tenancy. The landlord stated that they did not reimburse the tenant for the remainder of the tenancy as it took them that long to clean the unit.

The landlord testified that they had the tenant's forwarding address. The landlord stated they did not make a claim against it and did not return it. The landlord stated the tenant cause damage to the property.

Analysis

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

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

In this case, the tenant's rent of \$1,200.00 was deemed to have been paid. The tenant gave notice to end the tenancy earlier under section 50 of the Act. I find the tenant is entitled to recover the prorated amount of rent of \$39.45 for the 12 days of rent deemed to have been paid in the total amount of **\$473.42**.

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must do one of the following:**

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this case, the landlord did not applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address, which was given on October 3, 2017.

I accept the testimony of the tenant that they did not agree in writing that the landlord may retain any amount from the security deposit.

I find the landlord has breached 38(1) of the Act.

The security deposit is held in trust for the tenant) by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the Deposit. Therefore, I find that the landlord was not entitled to retain any portion of the Deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pays the tenant the sum of **\$1,200.00**, comprised of double the security deposit (\$600.00) on the original amount.

I find that the tenant has established a total monetary claim of **\$1,673.42** comprised of the above described amounts.

The tenant is given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlord must be served with a copy of this order as soon as possible. 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.

Conclusion

The tenant's' application is granted. The tenant is granted a monetary order in the above noted amount.

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: June 08, 2018

Residential Tenancy Branch