



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

On June 12, 2017, The Tenant applied for Dispute Resolution under the Residential Tenancy Act (“the Act”) seeking a monetary order for money owed or compensation for damage or loss under the *Act*, Regulation, or tenancy agreement and for the return of the security deposit.

The Tenant appeared at the hearing; however the Landlord did not. The Tenant testified that he received the Notice of Hearing documents from the Residential Tenancy Branch on December 4, 2017, and he sent them using registered mail to the Landlord on December 7, 2017. The Tenant provided affirmed testimony that he sent the registered mail to the Landlord’s address as contained in the tenancy agreement.

The Tenant testified that he included a copy of his documentary evidence. Based on the affirmed testimony of the Tenant I find that the Landlord is deemed to have been served with the Notice of Dispute Resolution Proceeding on December 12, 2017, five days after the mail was sent.

The hearing process was explained and the Tenant was asked if he had any questions. The Tenant provided affirmed testimony and 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 other compensation under the Act or tenancy agreement?

Background and Evidence

The Tenant testified that the tenancy began on October 1, 2011 as a 2 year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,835.00 was due by the first day of each month. The Tenant paid the Landlord's property manager a security deposit of \$900.00. The Tenant testified that he moved out of the rental unit on August 15, 2017.

The Tenant is seeking compensation for the following items:

Security Deposit	\$900.00
Repair Costs	\$430.00
Overpayment of Rent	\$917.50
Bank Fees	\$60.00

Security Deposit \$900.00

The Tenant testified that the Landlord failed to return the security deposit to him, or make a claim to the security deposit by applying for dispute resolution.

The Tenant testified that there was no agreement that the Landlord could retain the security deposit. The Tenant testified that he called the Landlord and told the Landlord to use the dispute address as his forwarding address because he had instructed Canada Post to forward his mail to his new address.

The Tenant testified that he also put the forwarding address information into writing by sending the Landlord a text message on September 2, 2017, directing the Landlord to use the dispute address. The Tenant provided a copy of the text message he sent to the Landlord. The Tenant pointed out that the Landlord received the text message because the Landlord responded to it.

The Tenant is seeking \$1800.00 which is double the amount of the security deposit.

Repair Costs \$430.00

The Tenant submitted that while he was living in the rental unit he completed repairs on the house. He testified that while the Landlord was in India the Tenant had repairs made to the roof. The Tenant testified that he spent \$430.00 for the repair. The Tenant testified that the Landlord never paid him for the repair cost.

The Tenant did not provide any photographs, receipt for the repair cost, or a copy of any written authorization from the Landlord that gave the Tenant permission to take care of the repair.

Overpayment of Rent \$917.50

The Tenant testified that he gave the Landlord three weeks' notice that he was moving out of the rental unit. He testified that on July 24, 2017, he informed the Landlord that he was moving out, and he moved out on August 15, 2017.

The Tenant is seeking compensation for the rent he paid for the period of August 15 until August 31, 2017.

Bank Fees \$60.00

The Tenant testified that he had to cancel the rent cheques for September, October, November and December after he moved out. He testified that the bank charged him \$15.00 per transaction. The Tenant did not provide a copy of a receipt.

Analysis

Section 38 (1) of the Act provides 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.

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

Security Deposit \$900.00

I find that the Tenant provided his forwarding address to the Landlord on September 2, 2017. The Landlord was informed that the Tenant had arranged to forward the mail and the Landlord could have used that address if he needed to make application for dispute resolution.

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 or pet damage 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 Tenant double the amount of the security deposit.

I grant the Tenant a monetary order in the amount of \$1,800.00.

Repair Costs \$430.00

I find that there is insufficient evidence from the Tenant to establish that he had satisfied the requirements of section 33 (3) and (5)(b) of the Act. The Tenant did not provide any documentation in support of the claim. The Tenant failed to provide a receipt to prove the loss and value of the loss.

The Tenants claim for \$430.00 is dismissed.

Overpayment of Rent \$917.50

The Tenant's claim for \$917.50 is dismissed. The Tenant did not provide the Landlord with proper written notice to end the tenancy. The earliest the Tenant could have legally ended the tenancy would have been August 31, 2017. The Landlord is entitled to keep all of the rent for August 2017.

Bank Fees \$60.00

The Tenant's claim for \$60.00 is dismissed. The Tenant chose to end the tenancy without proper notice. I find that the costs of cancelling the cheques are not the responsibility of the Landlord.

Filing Fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was partially successful, 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 \$1,900.00. I grant the Tenant a monetary order in the amount of \$1,900.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord failed to return the security deposit to the Tenant in accordance with section 38 of the Act.

The Tenant is granted double the amount of the security deposit and the cost of the filing fee. I grant the Tenant a monetary order in the amount of \$1,900.00.

The Tenant's other monetary claims are dismissed.

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: July 11, 2018

Residential Tenancy Branch