



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCT MNSD RPP

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; a monetary order for return of all or part of the pet damage deposit or security deposit; and for an order that the landlord return the tenant's personal property.

The landlord and the tenant attended the hearing and the tenant was accompanied by a social worker. The parties each gave affirmed testimony and were given the opportunity to question each other.

The landlord has provided 5 pages of evidentiary material to the Residential Tenancy Branch, however not within the time required under the Rules of Procedure, and the tenant has not received it. The landlord testified that he dropped it off at the rental unit on July 17 but did not have a forwarding address for the tenant. The building manager had mentioned that the tenant left the rental unit but came back from time-to-time, and some of the tenant's belongings remain in the rental unit. The landlord didn't look at the address on the Tenant's Application for Dispute Resolution, so didn't send it or serve it there. Any evidence that a party intends to rely on must also be provided to the other party. Since the landlord has not done so, I decline to consider the landlord's late evidence.

During the course of the hearing the parties agreed that the tenant can attend the rental unit to retrieve his belongings by the end of the day on July 31, 2018 or sooner, and I so order.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and more specifically for recovery of rent paid and spoiled food?

- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The tenant testified that this tenancy began 3 or 4 years ago and ended early February, 2018. A written tenancy agreement was signed by the parties but a copy has not been provided as evidence for this hearing. Rent in the amount of \$881.45 was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant which the tenant believes was \$450.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment on the main floor of a complex containing about 60 units.

The tenant further testified that on February 5 or 6, 2018 the building manager told the tenant it was no longer safe to reside in the building and the tenant had to move out immediately due to asbestos and mold. The tenant was dealing with his father's death, and had been his father's caretaker. There were signs erected about rat droppings, asbestos, mould and sewage in the drywall, and the building was uninhabitable. The tenant believes they were erected by an inspection company. They were on doors and common areas, and one on the wall across from the tenant's rental unit. The building manager said they would find a new place, but didn't, and the tenant stayed with family and friends until he found a place.

There were multiple building managers during the term of the tenancy, however it was the building manager who collected rent is the building manager who told the tenant he had to leave. The tenant re-entered the rental unit later and some possessions were gone, such as a TV, medical devices (walkers, wheel chair), laptop, a couple of video game systems, DVDs and an antique shotgun passed down from generations.

The tenant further testified that the fridge in the rental unit kept breaking down and he told the building manager about it. Then it stopped completely, while the tenant's dad was still residing there. Then the landlord left one in the hallway but by then, the food had already spoiled. The tenant was at the hospital with his father for a few days.

The tenant also had told the landlord's agent about a hole in the ceiling above the tub and toilet, and the landlord promised to fix it for years and never did. Now the tenant has been warned about asbestos and other contaminates. There were a few contractors; someone would arrange to attend and then not show up, then someone would show up but wouldn't work due to the asbestos.

The tenant provided the landlord's building manager with a forwarding address around the 20th of February, 2018 by text and by email. The tenant has never met the landlord or spoken to him

prior to this hearing, and neither the landlord nor the building manager has served the tenant with an Application for Dispute Resolution claiming against the security deposit.

The tenant claims \$881.45 for recovery of February's rent; \$300.00 for spoiled food; and recovery of the \$425.00 security deposit.

The landlord testified that the building manager mentioned to him that the tenant had left the rental unit but came back from time-to-time, and asked with at to do with the items left behind. The landlord told her that it was abandonment, and to leave it in the apartment for the meantime in case the tenant returned.

The building manager also told the landlord by email on January 31, 2018 that there was a problem with the fridge in the rental unit. On February 9, 2018 the building manager went to inspect and confirmed that the fridge needed to be replaced and arranged to have another delivered that day. She tried many times prior to get the fridge to the rental unit, but no one answered the door, and the landlord believed that as of February 9, 2018 the tenant was still living in the rental unit, until no rent was received for March, April and May.

The rental unit has still not been re-rented, and the landlord has been wanting to relocate the tenant. The landlord believes that the tenant lived in the rental unit for a long time, and there were no issues until his dad passed away. The landlord never heard about holes in the bathroom ceiling or asbestos until then. When asked about signs erected in the building, the landlord replied, "I have nothing to offer."

The building manager did not forward the tenant's forwarding address to the landlord.

Analysis

Firstly, a landlord must return a security deposit to a tenant in full by no later than 15 days after the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, whichever is later. If the landlord fails to do so, the landlord must repay the tenant double the amount. In this case, I accept the undisputed testimony of the tenant that he paid a security deposit in the amount of \$425.00, and provided a forwarding address to the landlord's building manager by text and by email, but was not able to provide a date. Therefore, I cannot be satisfied that the landlord has failed to return it within 15 days. I am also satisfied that the landlord has the tenant's forwarding address in the Tenant's Application for Dispute Resolution, and has not applied to keep it or return it. I find that the tenant has established a claim of \$425.00. If the landlord fails to return it within 15 days of today's date, the tenant will be at liberty to apply for double.

With respect to the balance of the tenant's monetary claim, the landlord offered no information with respect to the tenant's claim that he was told he had to move out right away. I accept the testimony of the tenant, and I find that the tenant should recover the rent he paid for February, 2018 in the amount of \$881.45 as claimed.

The landlord testified that he knew about the broken fridge on January 31, 2018 and the building manager left a fridge in the hallway on February 9, 2018. The landlord blames the delay on the tenant's unavailability, but I am not convinced of that. The tenant told the building manager about it prior to his dad passing. The tenant has not provided any evidence to substantiate the amount, and I award nominal damages in the amount of \$100.00 for spoiled food.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,406.45.

The parties agreed that the tenant can attend the rental unit to retrieve his belongings by the end of the day on July 31, 2018 or sooner, and I so order.

This order is final and binding and may be enforced.

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 26, 2018

Residential Tenancy Branch