



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

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;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlords were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on June 29, 2018. The landlords argued that they did not receive the tenant's notice of hearing package, but did get the submitted documentary evidence. The landlords were only notified of the hearing via the email submission deadline for evidence from the Residential Tenancy Branch. The landlords also argued that as the tenant had waited approximately 6 months since the application was filed to serve the hearing package and that the tenancy had ended on December 31, 2015 that he would need more time to collect any evidence in response to the tenant's application.

Preliminary Issue(s)

At the outset the landlord argued that they were not adequately served with the tenant's notice of hearing package. I find based upon the submissions of both parties that an adjournment of the hearing is warranted and that as this is a monetary claim there is no prejudice to the tenant. The hearing is adjourned to allow the landlords to submit evidence in regards to the tenant's monetary claim of \$863.12 for return of the security

deposit and a claim for recovery of utility costs (Hydro) and recovery of the filing fee. Both parties were cautioned that no further submissions of evidence would be accepted save the exception noted. Both parties were advised that a notice of an adjourned hearing letter would be sent to each party with a copy of this interim decision. On September 18, 2018 the hearing was reconvened with both parties.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss, return of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 1, 2009 on a fixed term tenancy ending on February 1, 2010 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated January 10, 2009. The monthly rent was \$1,595.00 payable on the 1st day of each month. A security deposit of \$797.50 was paid on January 9, 2009.

Both parties agreed that this tenancy originally began on February 1, 2010 on a fixed term tenancy until February 1, 2010. A security deposit of \$797.50 was paid on January 9, 2009. No Pet Damage Deposit was paid. A subsequent tenancy agreement dated August 26, 2010 was made to begin on September 9, 2010 on a fixed term until September 1, 2012 then thereafter on a month-to-month basis. The tenancy ended on December 31, 2015.

The tenant seeks a clarified monetary claim of \$863.12 which consists of:

\$55.62	Utilities, Hydro Dec15-31/15
\$797.50	Return of Original Security Deposit

The tenant claims that the landlord has failed to return the \$797.50 security deposit paid after the tenancy ended on December 31, 2015. The tenant stated that his forwarding address in writing request for the return of the security deposit was sent regular post to the landlord on January 4, 2016. The landlords disputed that at no time was the

tenant's forwarding address in writing was received. The landlords clarified that the only time it was received was within the documentary evidence received as part of the tenant's application package. The tenant was unable to provide any supporting evidence that the forwarding address in writing request for the security deposit was received by the landlord.

The tenant claims that \$55.62 is owed from unpaid utilities for the period December 15-31 of 2015 from a previous co-tenant's tenancy which ended on November 26, 2015. The landlords disputed this claim stating that during this period of time the tenant was renting the entire house for \$2,595.00 and that the tenant had possession of the rental house for the period of time December 15-31. The landlords argued that the tenant was subletting the other rental unit and acting as that co-tenant's landlord. The tenant argued that his co-tenant had moved out on November 26, 2015 and that the landlords had possession of the second rental unit and as such he was not responsible for that portion of the hydro cost.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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.

In this case, both parties confirmed that the landlord has not returned the \$797.50 security deposit paid by the tenant after the end of tenancy on December 31, 2015.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In this case, the tenant claims that the tenant's forwarding address in writing was served upon the landlord on January 4, 2016 via Canada Post Regular Post. The landlord has disputed that no such document was received. The landlord stated that the only service of the tenant's address was received was within the tenant's application for dispute. As such, I find that the tenant has not yet initiated section 38(1), but in the circumstances is

entitled to return of the original security deposit. I further note that both parties confirmed that at no time did the landlord receive the tenant's permission or authorization from the Residential Tenancy Branch to retain the security deposit.

On the tenant's claim for compensation of \$55.62 for unpaid utilities for the period December 15-31 of 2015 from a previous co-tenant's tenancy, I find that the tenant has failed. Although the tenant has argued that the co-tenant had vacated the rental unit on November 26, 2015 and the landlord's had possession of the rental unit, the landlords provided undisputed affirmed testimony that the co-tenant was instead a sub-tenant and that tenant's rental agreement was for the entire rental house and not just the one rental unit. On this basis, I find that the tenant has failed to provide sufficient evidence to establish the claim.

The tenant has established a total monetary claim of \$797.50. The tenant having been successful in the application for dispute is entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$897.50.

This order must be served upon the landlords. Should the landlords fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and 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: October 10, 2018

Residential Tenancy Branch