



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 money owed or 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 the security deposit pursuant to section 38, including double the amount;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

Issues

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Is the tenant entitled to compensation for loss?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began in June 2010 and ended on March 3, 2018. The tenant paid a security deposit of \$250.00 to the original landlord at the start of the tenancy. The property has sold on a couple occasions since the beginning of the tenancy. On December 30, 2017, the previous landlord issued the tenant a letter requiring him to vacate effective February 28, 2018 as the property had sold. The tenant was not issued a formal Two Month Notice as required under the Act.

The current landlord (respondent in this application) took ownership of the property on February 27, 2018 on the completion date of the sale.

The tenant is claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenant testified that he provided a forwarding address in writing by posting a notice on the door of the property on March 13, 2018.

The tenant testified that he was not given proper notice to vacate by the previous owner so he did not have to vacate. He was advised by the Residential Tenancy Branch that the Notice was not in the proper form and that he did not have to move. The tenant is claiming compensation for loss amounting to \$4250.00 for moving costs and various items left behind at the rental unit.

The landlord argues the previous owner was to transfer ownership of the property with vacant possession as per the contract of purchase and sale. The landlord argues that he is not the landlord and the tenant should take up his claim with the previous owner.

Analysis

As per section 93 of the Act, the obligations of a landlord under this Act with respect to a security deposit or a pet damage deposit run with the land or reversion.

As the tenancy had not legally come to an end prior to the completion date of the sale, February 27, 2018, I find the respondent purchaser became the landlord of the tenant for the purposes of this Act. The tenant did not vacate the rental unit until March 3, 2018 so the respondent was the landlord for the period of February 27, 2018 to March 3, 2018.

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

I find the tenant did provide a forwarding address in writing to the landlord on March 13, 2018 and this was deemed served on March 16, 2018. The tenants' security deposit was not refunded within fifteen days of the end of the tenancy or the date a forwarding address was provided as required by section 38 of the Act. Neither did the landlord have written authorization to retain the security deposit or file an application to claim against the deposit; therefore, the doubling provisions of section 38 apply.

I allow the tenant's claim for return of the security deposit and award an amount of \$500.00, which is double the original security deposit of \$250.00.

The tenants claim for compensation for loss for moving related costs and items left behind in the rental unit is dismissed as the tenant has provided insufficient evidence for this part of the claim. As stated by the tenant in his own testimony, the tenant was not provided legal notice as such he was not required to vacate the rental unit. The tenant chose to vacate on his own accord and as such is not entitled to any compensation for losses for moving related costs. Nor did the tenant provide any evidence of such losses. The tenant provided no details or testimony on why the landlord should be responsible for the items allegedly left behind in the rental unit or why he was not able to take these items when he vacated. This part of the tenant's claim is dismissed without leave to reapply.

As the tenant was only partly successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$500.00. Should the landlord fail to comply with this Order, this 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 22, 2018

Residential Tenancy Branch