



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CEDAR COTTAGE HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR MND MNDC MNSD FF

Introduction:

Both landlord and tenant made Applications but the landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:50 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. on November 6, 2018. The tenant attended the hearing and gave sworn testimony. She was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided evidence that she served her Application for Dispute Resolution by registered mail and it was not returned. The postal service notes it was delivered on June 20, 2018. The tenant said she provided her forwarding address to the landlord in writing in July 2018 (letter in evidence). I find the landlord filed their application on July 7, 2018 and the tenant confirmed it was served on her by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for unpaid rent and damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

The tenant applies for double her security deposit pursuant to section 38 of the Act and recovery of her filing fee pursuant to section 72.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that the tenant owes rent and damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Is the landlord entitled to recover the filing fee?

Has the tenant proved on the balance of probabilities that she is entitled to a refund of double her security deposit and to recover the filing fee?

Background and Evidence:

The landlord did not attend the hearing although served with the tenant's Application/Notice of Hearing and also filing their own Application to be heard at this time. The tenant attended and was given opportunity to be heard, to present evidence and to make submissions. The tenant provided evidence stated that the tenancy commenced April 1, 2017 on a fixed term lease to September 30, 2017 and then on continued on another fixed term lease to February 28, 2018. The monthly rent was \$1950 and a security deposit of \$975 was paid. The landlord claims \$1950 for unpaid rent and \$280 for garbage removal and cleaning.

The tenant said she vacated on February 28, 2018 when the fixed term lease was expired and paid all her rent to that date. She said she removed all garbage and cleaned but she was unable to contact M.K. who worked for the company and was the only contact information she had. She said she had a good relationship with the landlord's contact and is baffled by their claim.

The tenant provided evidence she provided her forwarding address in writing in July 2018 but the landlord has retained her security deposit. She requests double the deposit and filing fee for her application. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Monetary Order

I find insufficient evidence to support the landlord's claim for unpaid rent. The tenant produced a fixed term lease in evidence that clearly shows she was to vacate on February 28, 2018 and she said she complied and had paid all her rent to date. I find her evidence credible.

In respect to the damage claim, I find awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find insufficient evidence to support the landlord's claim. I find the tenant stated she cleaned and removed garbage and the landlord's representative did not do a move-out report. The landlord did not attend the hearing to support this claim and provided no documentary evidence of the damages. I dismiss the landlord's claim in its entirety and find they are not entitled to recover their filing fee due to lack of success.

In respect to the tenant's claim, I find section 38 of the Act provides as follows:

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 most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

I find the evidence of the tenant credible that she paid \$975 security deposit, served the landlord with her forwarding address in writing in July 2018 and vacated on February 28, 2018. I find she gave no permission for the landlord to retain the deposit and has not received the refund of her security deposit. However, I find the landlord filed their Application to claim against the deposit on July 7, 2018 which is within the 15 days allowed under section 38(1) of the Act after receiving the tenant's forwarding address in writing. I find this avoids the doubling of the deposit. I find the tenant entitled to recover her security deposit.

Conclusion:

I dismiss the Application of the landlord without leave to reapply and without recovery of the filing fee due to lack of success. I find the tenant entitled to a monetary order as calculated below to recover her security deposit and filing fee

Calculation of Monetary Award:

Security deposit	975.00
Filing fee	100.00
Total monetary order to tenant	1075.00

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: November 06, 2018

Residential Tenancy Branch