



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLANET GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant 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. The tenant acknowledged receipt of the landlord's application for dispute resolution including the evidence on file.

Issues

Is the landlord entitled to a monetary award for compensation for damage or loss?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background & Evidence

The monthly rent for this tenancy was \$1450.00. The tenant paid a security deposit of \$725.00 at the start of the tenancy which the landlord continues to hold.

The landlord is claiming an amount of \$200.00 the landlord was fined for a strata by-law infraction by the tenant for failure to provide proper notice to prior to moving.

The landlord is also claiming prorated rent for August 1st to August 10th, 2018. The landlord testified that the tenant did not pay rent for this period and did not return keys to the landlord until August 10, 2018. The landlord testified that he didn't receive a text message from another agent for the landlord until August 10, 2018 advising that the tenant had texted on him on this same date advising that the keys had been returned.

The tenant did not dispute the landlord's claim for the strata fine. The tenant testified that he advised an agent of the landlord that the keys had been returned and provided a forwarding address by text message at 10:48 p.m. on August 7, 2018 not on August 10, 2018 as claimed by the landlord. The tenant is also arguing the landlord did not file this application or return the deposit within 15 days of the forwarding address being provided.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

I accept the landlord's claim for loss for the strata fine which was not disputed by the tenant. I award the landlord **\$200.00** for this portion of the claim.

The onus is on the applicant to prove the loss claimed. Neither party submitted evidence of the alleged text messages sent. I find the landlord has failed to establish that the keys were returned on August 10, 2018 and limit this part of the landlord's claim to an award of **\$327.42** (\$1450.00/31 days x 7 days), which represents loss of rent for the prorated period of August 1st 2018 to August 7, 2018.

As the landlord was for the most part successful in this application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for this application from the tenant.

Total entitlement for Landlord: \$627.42 (\$200.00 + \$327.42 + \$100.00)

The landlord continues to hold a security deposit in the amount of \$725.00. The landlord is permitted to retain \$627.42 from this security deposit in full satisfaction of the monetary award and the balance of \$97.58 is to be returned to the tenant forthwith.

The tenant is granted a Monetary Order in the amount of \$97.58.

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.

Section 88 of the Act sets out how documents may be served. Text and/or e-mail message is not an acceptable method of service pursuant to section 88 of the Act.

I dismiss the tenant's argument that he should be entitled to double the security deposit as the onus to prove the date on which a forwarding address was provided is on the tenant. I find the tenant has provided insufficient evidence to establish that a forwarding address was provided by text message on August 7, 2018. In either event, text message is not an acceptable method of service under the Act.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$97.58. 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: December 18, 2018

Residential Tenancy Branch