



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 an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), for a monetary order for return of rent, for the return of the security deposit and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary and procedural matters

In this case, the tenant has listed additional items in their monetary worksheet that was filed prior to the hearing; however, the tenant did not amend their claim. I find you cannot make a claim through their evidence. Therefore, I will only consider the tenant’s application as filed.

Issues to be Decided

Is the tenant entitled to a monetary order for money owed?
Is the tenant entitled to return of the security deposit claim?

Background and Evidence

The parties agreed that the tenancy began on May 1, 2018. Rent in the amount of \$2,200.00 was payable on the first of each month. The tenant paid a security deposit of \$1,100.00. The tenancy ended on August 1, 2018.

The tenant claims as follows:

a.	Return of August 2018, rent	\$2,200.00
b.	Return of double the security deposit	\$2,200.00
c.	Filing fee	\$ 100.00
	Total claimed	\$2,500.00

The tenant testified that the landlord accepted rent for August 2018, and then they were locked out of the rental unit on August 1, 2018.

The landlord testified that the tenant was operating the rental unit as an Airbnb. The landlord stated that they served the tenant with a One Month Notice to End Tenancy effective July 31, 2018. The landlord stated they went to the rental unit on August 1, 2018 and there were no personal items in the rental unit. The landlord stated that they then changed the locks on the door.

The landlord acknowledged that they received rent for August 2018; however, they believe they are entitled to keep the money for the tenant's violation of the Act.

The tenant testified that the landlord was provided their forwarding address in the documentary evidence.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, I accept that the tenant may have been operating the rental unit as an Airbnb contrary to their tenancy agreement. The landlord ended the tenancy by issuing a One Month Notice to End Tenancy for Cause effective July 31, 2018.

I find the landlord had no legal right to accept and retain rent that was paid on July 31, 2018, for August rent and then lock the tenant out of the rental unit on August 1, 2018. The landlord cannot retain money simply because they feel entitled to do so.

Further, even if I accept the tenant did violate the terms of the tenancy agreement. The only remedy the landlord had was end the tenancy, which they did. I find the landlord had no legal right to keep rent for August 2018. Therefore, I find the tenant is entitled to the return of rent for August 2018, in the amount of **\$2,200.00**.

In this case, I find the tenant has not provided the landlord with their forwarding address in writing. Simply providing an address in their evidence does not meet the requirements of the Act. I find the tenant's application for double of their security deposit is premature. Therefore, I dismiss this portion of the tenant's claim with leave to reapply.

I find the tenant has established a monetary claim of **\$2,300.00** comprised of the above amount and the \$100.00 filing fee. The tenant is granted a formal order pursuant to section 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant is granted a monetary order, pursuant to section 67 of the Act. The tenant's application for return of double the security is premature. The tenant is granted leave to reapply.

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: March 15, 2019

Residential Tenancy Branch