



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD FFT

Introduction

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

- return of the security and/or pet deposits pursuant to section 38 of the *Act*,
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*, and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The tenant attended at the date and time set for the hearing of this matter. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 2:00 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding documents for this Application. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

As only the tenant attended the hearing, I asked the tenant to confirm that he had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenant testified that the landlord was served with the Notice of Dispute Resolution Proceeding and all of his evidence by Canada Post registered mail on December 20, 2018 to the landlord's address which is also the dispute address, and submitted into evidence a registered mail tracking number as proof of service. I have noted the tracking number on the cover sheet of this Decision.

During the hearing, I accessed the Canada Post website to confirm that the tenant's package was confirmed delivered to the landlord on December 27, 2018.

Therefore, I find that the landlord was served with the notice of this hearing and the tenant's evidence in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the return of the security and/or pet damage deposits?

Is the tenant entitled to a monetary award as compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The tenant testified that he contacted the landlord regarding the sublet of her rental unit on September 22, 2018 and made arrangements to meet with the landlord on September 26, 2018 to view the rental unit as the tenant was living outside the Province at the time.

On September 26, 2018, the tenant met the landlord, agreed to sublet the rental unit from the landlord beginning November 15, 2018, and provided the landlord with \$3,250.00 in cash for payment of rent for half the month of November and the full month of December 2018, as well as for payment of the \$1,300.00 security and pet damage deposits. The landlord provided the tenant with a receipt for this payment. The tenant submitted a copy of the receipt into documentary evidence for this hearing.

The tenant testified that the parties had a written one-page sublet tenancy agreement, which was submitted into documentary evidence. The one-page tenancy agreement was emailed by the landlord to the tenant on September 27, 2018 and confirmed that the tenancy was for the rental of a "furnished 2 bedroom suite...for a stay of up to a max of 12 months beginning on November 15, 2018". In the agreement the landlord confirmed that the tenant had paid \$3,250.00 on September 27, 2018 for "first month

and half's rent" and that "1300 of this is a refundable damage deposit which has also been paid".

The tenant submitted into documentary evidence pages of text message communication between the parties. In summary, on November 5, 2018, the landlord contacted that tenant to advise him that due to her personal issues the sublet agreement could not commence until December 1, 2018.

The tenant informed the landlord that this delay in being able to move into the rental unit would not work for him, and as such he requested the return of the rent and deposits paid as he had to find other accommodation on short notice. The tenant provided the landlord with his email address so that an e-transfer could be made for the return of his money.

The tenant testified that over the course of November and December 2018, the landlord continued to assure him that she would return his money but failed to ever do so.

As a result, the tenant filed an application for dispute resolution seeking the return of the money paid for the rental unit he was never able to occupy.

The tenant testified that he discovered through social media that the last name originally provided to him by the landlord was an alias. The tenant further testified that when he performed an internet search by the landlord's legal name, he discovered that she had previously committed a bank-related fraud and was also previously profiled on the local "crime stoppers wanted list".

Analysis

Section 16 of the *Act* states that:

The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 7(1) of the *Act* states that:

If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

In the absence of the landlord attending the hearing, based on the testimony and evidence of the tenant, on a balance of probabilities, I make the following findings in this matter:

- The one-page written tenancy agreement between the parties very clearly stated that the tenancy would begin on November 15, 2018.
- The landlord failed to allow the tenant to move in on November 15, 2018, therefore the landlord contravened the tenancy agreement by failing to allow the tenant to move into the rental unit in accordance with the terms of the tenancy agreement. As a result of the landlord's contravention of the terms of the tenancy agreement, the landlord must compensate the tenant for the loss of rent paid for the ½ month of November and full month of December 2018 of \$1,950.00.
- As the landlord prevented the tenant from taking possession of the rental unit on November 15, 2018, I find that the tenancy ended on that day.
- As the tenant was prevented from taking possession of the rental unit, the landlord's right to the security and pet damage deposits was extinguished, and therefore I find the tenant is entitled to the return of the security and pet damage deposits of \$1,300.00.

Therefore, based on the above-noted findings, the tenant is entitled to a monetary award of \$3,250.00 for compensation due the landlord's contravention of the tenancy agreement. As the tenant was successful in his application, he is also entitled to recover the \$100.00 cost of the filing fee for this application from the landlord.

In summary, I issue a Monetary Order in favour of the tenant for \$3,350.00 as follows:

Item	Amount
Return of rent paid for ½ month of November and the full month of December 2018	\$1,950.00
Return of the security and pet damage deposits	\$1,300.00
Recovery of filing fee for this Application	\$100.00
Total Monetary Order in favour of Tenants	\$3,350.00

Conclusion

I issue a Monetary Order in favour of the tenant in the amount of \$3,350.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. 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: April 11, 2019

Residential Tenancy Branch