Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNDCT, MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("*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; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for loss or damage under the Act, regulation or tenancy agreement?
Is the tenant entitled to the return of double the security deposit as a result of the landlords' failure to comply with section 38 of the Act?

Background and Evidence

The tenant gave the following testimony. The tenant testified that he entered into a one year fixed term for this unit on August 1, 2016 with the monthly rent of $1600.00 plus

50% of the utilities. The tenant testified that he provided a security deposit of $800.00 to which the landlord has only returned $248.51. The tenant testified that after one year the parties entered into a second fixed term. The tenant testified that he thought that the rent for the second fixed term was for $1750.00 per month plus 50% of the utilities. The tenant testified that when he moved out he found a copy of a tenancy agreement and that it stated that utilities were included. The tenant testified that he feels that he has overpaid by making monthly payments of 50% towards the utility bills for a total of $2653.85. The tenant seeks to recoup that amount and the return of double his security deposit for a total claim of $4253.85.

The landlord gave the following testimony. The landlord testified that he had a verbal agreement with the tenant to cover the outstanding utility bills and therefore retained the majority of the security deposit to cover those costs. The landlord testified that the tenant agreed with him when he visited him and discussed the matter in person. The landlord testified that the tenant and he met at a McDonalds to sign the second fixed term agreement. The landlord testified that as they did not have access to a copy machine, he hand wrote a second agreement for the tenant and simply forgot to add the condition that the tenant was responsible to pay 50% of the utilities on the tenants copy. The landlord testified and submitted a copy of a signed agreement by both parties that reflects that the tenant is responsible for 50% of the utility costs.

Analysis

Utility costs -$2653.85

The landlord provided a signed complete tenancy agreement that clearly reflects that the tenant was responsible for 50% of the utilities in both fixed term agreements. The tenant only provided one page from an agreement that he alleges is the contract. I find that the tenancy agreement submitted from the landlord is genuine and was the contract that the parties agreed to. As a result, I find that the tenant was responsible for paying 50% of the utilities throughout his tenancy and therefore has not made any overpayments, accordingly; I dismiss this portion of the tenants' application.

Security Deposit – $1600.00

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy* Act.

Section 38 (1) says that 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.

And Section 38 (6) says 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.

The landlord felt that the parties had reached a "verbal agreement" to allow him to retain the majority of the security deposit; however, the tenant disputed that fact. The landlord did not provide sufficient documentation to support his position. In addition, the landlord confirmed that he did not file an application and that he did not return the entire security deposit to the tenant within fifteen days as noted above; he only returned a portion in the amount of $248.51. Based on the testimony of the tenant, the documentary evidence before me and in the absence of sufficient disputing evidence from the landlord, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenant is entitled to the return of double his deposits $800.00 x 2 = $1600.00 minus the $248.51 already sent to the tenant leaving a final award to the tenant in the amount of $1351.49.

Conclusion

The tenant has established a claim for $1351.49. I grant the tenant an order under section 67 for the balance due of $1351.49. This order may be filed in the Small Claims 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: June 14, 2019

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Residential Tenancy Branch