



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on April 26, 2019, (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit;
- a monetary order for compensation; and
- an order granting recovery of the filing fee.

The Tenant's representatives, M.M. and M.K., as well as the Landlord's Agent J.L. attended the hearing at the appointed date and time, each provided affirmed testimony.

Preliminary and Procedural Matters

M.M testified that he served the Landlord with the Tenant's Application and documentary evidence by fax on May 2, 2019. The Tenant stated that he followed up with the Landlord to confirm receipt. The Tenant stated that the Landlord did not receive the Tenant's Application and evidence on May 2, 2019; therefore, he re-faxed the Tenant's Application and documentary evidence to the Landlord on May 15, 2019. J.L. stated that the Landlord received the Application, however, did not receive the Tenant's evidence.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*

- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

The Tenant has not served the Landlord in a manner required by section 89(1) of the *Act*. I am satisfied that the Landlord received the Tenant's Application for dispute resolution which outlines the Tenant's claims; however, J.L. stated that he did not receive the Tenant's evidence. I find that the Tenant failed to properly serve the Landlord pursuant to the *Act*.

The Residential Tenancy Branch Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing. I accept that the Landlord did not receive the Tenant's evidence; therefore the only evidence I will consider from the Tenant is oral testimony during the hearing.

At the start of the hearing, M.M. stated that he wished to withdraw his claim for the return of the Tenant's security deposit, as the Tenant had agreed to the Landlord retaining the full amount of \$700.00 at the end of the tenancy.

The Tenant had also applied for monetary compensation in the amount of \$964.44. During the hearing, M.M. requested to amend the Application to reduce the monetary claim to \$475.80 in relation to compensation owed.

Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed that the tenancy began on August 1, 2013. Near the end of the tenancy, the Tenant paid rent in the amount of \$2,416.00 to the Landlord each month. The Tenant paid a security deposit in the amount of \$700.00. The tenancy ended on August 23, 2018.

During the hearing, M.M reduced the Tenant's monetary claim to \$475.80 in compensation. M.M. stated that his father became ill and was required to vacate the rental unit as a result. M.M. stated that he is his father's power of attorney. M.M. stated that he and the Landlord had agreed that the Tenant would provide the Landlord with vacant possession of the rental unit on August 23, 2018, in exchange for a per diem refund of 8 days rent in the amount of \$79.43 for a total of \$635.44 owing to the Tenant.

M.M. stated that he and M.K. completed a move out condition inspection with the Landlord, during which there had been some damages noted. M.M. stated that he agreed to the Landlord retaining the Tenant's security deposit in the amount of \$700.00. M.M. stated that he expected a cheque to be sent to him in the amount of \$635.44, shortly after the end of the tenancy.

M.M. stated that he received a cheque from the Landlord in the amount of \$159.64. M.M. stated that he is seeking the remaining balance of \$475.80 in relation to the agreed upon amount of per diem rent owed to the Tenant as he did not consent to the Landlord deducting any further amounts above the \$700.00 security deposit.

In response, J.L. confirmed that the parties had agreed to the Tenant being compensated \$635.44 in exchanged for vacating the rental unit 8 days early. J.L. stated that the Landlord deducted \$475.80 in addition to retaining the Tenant's security deposit in the amount of \$700.00, in order to repair the damage and for cleaning of the rental unit. J.L. stated that the Landlord sent the Tenant a cheque in the amount of \$159.64 which represents the remaining balance owed to the Tenant following the deduction.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

In this case, I accept that the parties agreed that the Tenant would provide the Landlord with vacant possession of the rental unit on August 23, 2018, in exchange for a per diem refund of 8 days rent in the amount of \$79.43 per day, for a total of \$635.44. I accept that the Tenant received a cheque from the Landlord in the amount of \$159.64. J.L. stated that the Landlord deducted \$475.80 in addition to retaining the Tenant's security deposit in the amount of \$700.00, in order to repair the damage and for cleaning of the rental unit.

I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant agreed to further deductions above the \$700.00 security deposit. I find that the Landlord was not entitled to arbitrarily make further deductions to money owed to the Tenant for damages and cleaning. Should the Landlord feel as though there is further money owed, the Landlord can make an application for dispute resolution seeking an award for further compensation.

In light of the above, I find that the Tenant is entitled to a monetary award in the amount of \$475.80 which represents the monetary portion of per diem rent owed to the Tenant

which was agreed upon, but not provided to the Tenant by the Landlord. As the Tenant was successful with his Application, I find that the Tenant is entitled to the return of the \$100.00 filing fee.

Pursuant to section 67 of the Act, I find the Tenant is entitled to a monetary order in the amount of \$575.80

Conclusion

The Tenant is granted a monetary order in the amount of \$575.80. This order must be served on the Landlord as soon as possible. If the Landlord fails to comply the monetary order it may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: August 1, 2019

Residential Tenancy Branch