



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 the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlords with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on June 2, 2019. Both parties agreed the landlords served the tenant with submitted documentary evidence via Canada Post Registered Mail on August 9, 2019. Neither party raised any service issues. I accept the undisputed testimony of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 12, 2015 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated October 7, 2015. The monthly rent was \$925.00 payable on the 1st day of each month. A security deposit of \$450.00 was paid on October 6, 2015. Both parties confirmed that during the tenancy two notice of a rent increase were issued for a final monthly rent being \$984.00.

The tenant seeks a monetary claim of \$4,782.50 which consists of:

\$4,320.00 Return of \$480.00 ($\frac{1}{2}$ months rent X 9 months, August 2018 to April 2019)

\$462.50 Compensation, Sec. 38 (6) Fail to Comply

The tenant stated that the landlord breached their agreement which allows the tenant to have a roommate in the two-bedroom suite. The tenant argues that this was not honored by the landlords and as such the tenant suffered a financial loss for this 9 month period. The landlords dispute this claim stating that at no time was permission refused for the tenant to have a roommate. The tenant argues that the landlords did refuse permission and has referred to an email dated July 11, 2018 at 1:05pm. The tenant refers to the last paragraph which states in part,

Should you choose not to proceed with proposed changes for the rental agreement, but still intend on Have N. stay with you, I would recommend perusing alternate living arrangements. Please let us know how you'd like to proceed.

The landlords argued in dispute referring to the follow up email by the tenant, July 11, 2018 at 9:58pm which states in part,

I've thought about things and gotten some advice. I'm going to continue with the month to month agreement that's already in place. If there has been an increase in utility usage, I'd be happy to talk about it with you and could potentially compensate you for the difference.

The tenant also seeks compensation of \$462.50 pursuant to section 38 (6) of the Act. Both parties confirmed the tenancy ended on April 30, 2019 and that the landlord was provided with the correct forwarding address in writing on April 17, 2019. The landlords state that the tenant's attempted to return the security deposit on May 12, 2019, but was ultimately not successful until May 16, 2019 via etransfer.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the evidence of both parties and find that the tenant has failed to establish a claim that he was not given permission for a roommate which caused him to incur an added expense for \$480.00 per month (equal to ½ of the monthly rent). The tenant's only evidence in support of his claim is an email in which the landlords offered a new tenancy. The tenant has argued that by making this offer, the landlord refused their permission to allow the tenant to have a roommate. This was disputed by the landlord. In reading the email, I find that this is not a refusal, but instead an offer of an alternative arrangement. The landlord's follow up on this evidence is a continued email in which the tenant notifies the landlords

I've thought about things and gotten some advice. I'm going to continue with the month to month agreement that's already in place...

I accept the landlord's submission as reasonable in this context that the tenant chose to not have a roommate and continue the tenancy as is. I find that there is insufficient proof that the landlords denied permission to the tenant. On this portion of the claim, the tenant's monetary request is dismissed without leave to reapply.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the *Act* equivalent to the value of the security deposit.

On the tenant's request for compensation under section 38 (6), I have found that both parties confirmed that the tenancy ended on April 30, 2019; the tenant provided his forwarding address in writing for return of the security deposit on April 17, 2019. Both parties confirmed that the landlord paid \$462.50 via e-transfer to the tenant on May 16,

2019, making it 1 day late beyond the allowed 15 day time limitation. A review of the signed copies of the tenancy agreement show that a security deposit of \$450.00 was paid, however a copy of a receipt issued by the landlord shows a \$462.50 security “damage deposit” paid on October 6, 2015. A review of the tenant’s claim does not clarify the discrepancy. However, I find that a \$462.50 security deposit was paid as the landlord did not dispute the amount. The landlords provided undisputed testimony that they did not apply for dispute of returning the security deposit, nor did the landlords receive permission from the tenant to retain it. On this basis, I find that the tenant has established a claim for \$462.50 for failing to comply with the Act, under section 38 (1) and is subject to section 38 (6).

The tenant has established a total monetary claim of \$462.50. I grant the tenant recovery of \$50.00 for being partially successful in his application.

Conclusion

The tenant is granted a monetary order for \$512.50.

This order must be served upon the landlords. Should the landlords fail to comply with this order, the 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: September 09, 2019

Residential Tenancy Branch