



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code 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 money owed, for the return of security deposit and to recover the cost of 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.

Issues to be Decided

Is the tenant entitled to a monetary order for money owed?

Is the tenant entitled to the return of the security deposit?

Background and Evidence

The parties agreed that the tenancy began on January 1, 2016. Rent in the amount of \$1,500.00 was payable on the first of each month. The tenant paid a security deposit of \$750.50. The tenancy ended on September 11, 2019. The landlord subject today's hearing took possession of the property in 2017.

The tenant claims as follows:

| | | |
|----|----------------------------|-------------------|
| a. | Return of Hydro | \$ 424.80 |
| b. | Propane tank rental fee | \$ 302.40 |
| c. | Return of security deposit | \$ 750.00 |
| e. | Filing fee | \$ 100.00 |
| | Total claimed | \$1,577.20 |

The tenant testified that they should be entitled to the return of the hydro they paid. The tenant stated that they are responsible for hydro; however, the address was changed on the account and they did not receive the invoices for several billing periods, and it was a hardship when they finally had to pay for the outstanding utilities.

The tenant testified that the landlord did not want to pay for the rental of propane tank which is the only source of heat. The tenant stated that they had a call from the service provider that the propane tank would be removed if they did not pay the service rental invoice for 2019. The tenant stated that they had no option except to pay for the tank rental.

The tenant testified that the landlord was given their forwarding address by email and by letter dated August 29, 2019, sent by registered mail.

The landlord testified that they paid for the propane tank rental for 2017 and 2018; however, they do not believe the rental of the tank is their responsibility.

The landlord acknowledged that they received the tenant's forwarding address. The landlord stated they did not make an application claiming against the security deposit or return it. The landlord stated they did not receive the tenant's security deposit from the previous owner when the property was sold.

The tenant argued that the security deposit was transferred to the new owner.

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 respective 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, hydro was not included in the rent. While I accept the tenant's evidence that there was a delay in receiving the invoices, which created a hardship. However, that was avoidable had the tenant simply set the money aside. I find the tenant was required to pay the hydro. I find the tenant has failed to prove a violation of the Act. Therefore, I dismiss this portion of the tenant's claim.

I am satisfied that the tenant is entitled to the return of the cost of the propane rental. This had always been paid by the landlord. I find the landlord breached the Act, when they failed to provide the propane tank rental service. Therefore, I find the tenant is entitled to recover the cost of the propane tank rental fee in the amount of **\$302.40**.

In this case, the evidence of the landlord was the security deposit was not transferred in the sale of the property. However, that is not an issue for me to decide as the security deposit follows the tenancy. If the landlord did not receive the security deposit from the previous owner that is an issue between the seller and buyer, not the tenant.

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

38 (1) 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.

...

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(6) 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.

In this case, I am satisfied that the landlord had received the tenant's forwarding address, I am satisfied that the landlord had not applied for arbitration, within 15 days of the end of the tenancy, or receipt of the forwarding address, which was given on August 28, 2019 and the tenancy legally ended on September 11, 2019.

I find the landlord has breached 38(1) of the Act.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord was not entitled to retain any portion of the security deposit(s).

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenant(s) the sum of **\$1,500.00**, comprised of double the security deposit (\$750.00) on the original amount paid.

I find that the tenant has established a total monetary claim of **\$1,902.40** comprised of the above described amounts and the \$100.00 fee paid for this application and I grant the tenant an order under 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 for money owed and the return of the security deposit.

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: October 24, 2019

Residential Tenancy Branch