



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE LUXTON THE LUXTON (WINCHESTER
MANOR) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDCT

Introduction

This hearing dealt with a tenant's application for a Monetary Order for return of the security deposit and compensation for other damages or loss under the Act, regulations or tenancy agreement. The tenant appeared at the hearing along with an individual there to assist him. There was no appearance on part of the landlord.

Since the landlord did not appear, I explored service of hearing documents upon the landlord. The tenant submitted that he sent the hearing package to the landlord at the service address listed on the tenancy agreement via registered mail on October 22, 2019; however, that package was returned to him as unclaimed. The tenant spoke with the postman and the postman told him that the landlord's mail is often delivered to a different unit (unit 312). The tenant re-sent the hearing package to the landlord using unit 312 and that package was successfully delivered. The tenant then sent his evidence to the landlord on November 28, 2019 via registered mail using unit 312 and that package was unclaimed.

I am satisfied the tenant met his obligation to serve the landlord by registered mail using a service address provided to him on the tenancy agreement and another address the tenant understands is the mailing address the landlord ordinarily uses to conduct business as a landlord. Therefore, I admitted the documents and I continued to hear from the tenant in the absence of the landlord.

Issue(s) to be Decided

Has the tenant established an entitlement to return of the security deposit and other compensation for damages or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy started on June 1, 2018 on a month to month basis. The tenant paid a security deposit of \$360.00 and the tenant was required to pay rent of \$720.00 on the first day of every month.

The tenant testified that on August 30, 2019 he gave the landlord oral notice of his intention to move out on October 1, 2019. On October 1, 2019 he approached the landlord and the landlord informed the tenant he had not given proper notice and the landlord would hold him responsible for rent for October 2019.

The tenant proceeded to remove his possessions and clean the unit and met the landlord on October 3, 2019 for purposes of conducting the move-out inspection and returning the keys. The tenant testified that the landlord had a move-out inspection report and the tenant signed the report and in doing so the tenant authorized the landlord to keep his security deposit. The tenant testified that he did not realize what he was signing at the time and he relied upon the landlord's oral statement that a refund of the security deposit would be sent to him in a few weeks time. However, upon returning home he read the documentation and it appears he signed over the security deposit and he still owed the landlord \$360.00 for the balance of October 2019 rent. The tenant stated that he understands new tenants took possession of his unit on October 7, 2019 and the landlord has pursued him for the remainder of unpaid rent for October 2019. By way of this application, the tenant seeks return of the security deposit based on verbal statements that the landlord made during the move-out inspection.

In addition to return of the security deposit, the tenant seeks compensation as follows:

- \$430.00 to remove and replace his personal possessions in the unit to allow the landlord to spray for pests. The tenant testified that he was informed by the landlord that if he did not prepare his unit for spraying the landlord would proceed with an eviction, so the tenant had his possessions removed and then replaced in the unit and he paid someone \$430.00 to do this.
- \$370.00 for stress he endured for the landlord not calling Telus with respect to the amount the tenant was being charged by Telus for cable and internet. The tenant explained that the landlord had arranged for a "deal" with Telus and then the deal ran out and Telus told the tenant that the landlord would have to call them about the "deal", but the landlord did not.

- \$438.00 for additional cable and internet costs the tenant incurred because the above described “deal” ran out. The tenant stated that he understood that the landlord had made a deal with Telus whereby the tenant would pay \$400.00 in a lump sum up front and then would only have to pay \$20 - \$30 per month for cable and internet, thereafter. However, the actual Telus bills were higher than that and as a result the tenant ended up with accumulated charges by Telus. Although the tenant claimed \$438.00, he testified that his most recent bill from Telus was \$421.00.

Analysis

Under section 38 of the Act a landlord must either refund a security deposit or make a claim against it within 15 days of the tenancy ending or receiving a forwarding address from the tenant in writing, unless the landlord has authorization to retain the deposit. Authorization to retain a security deposit may be obtained from the tenant, in writing, or from an Arbitrator.

In this case, the tenant acknowledged that he gave the landlord written consent to retain his security deposit and it is upon the tenant to read and understand what he is signing. As such, I find the tenant is not entitled to return of the security deposit because he has given the landlord written consent to retain it and I dismiss this portion of his claim.

The other claims put forth by the tenant are provided for under sections 7 and 67 of the Act. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

As for moving personal possessions to accommodate the landlord's efforts to exterminate pests from the rental unit, I find the tenant is not entitled to compensation for such actions. A landlord is obligated to deal with pests as part of their obligation to repair and maintain a property; however, the landlord is not responsible for dealing with the tenant's personal possessions. In my view, the landlord bears the cost to exterminate and the tenant bears the burden to deal with his personal possessions.

Therefore, I dismiss the tenant's request for compensation to move his possessions in and out of the unit while pest spraying was underway.

The tenant seeks compensation for loss of cable and internet and costs for cable and internet that are greater than he expected to pay; however, when I turn to the tenancy agreement, I note that cable and internet was not a service provided to the tenant by the landlord as part of his rent. This is consistent with the tenant's testimony that he had his own account with Telus and the tenant was billed for these services directly by Telus. Accordingly, I am of the view that charges for the services provided to the tenant by Telus is an issue between Telus and the tenant and the tenant ought to have determined the costs for these services by communicating with Telus himself when he signed up for the services. I find I am not persuaded that the landlord was obligated to contact Telus to deal with a billing dispute between the tenant and Telus. Therefore, I dismiss the tenant's claims for compensation related to stress due to loss of cable and internet, the loss of cable and internet, or the higher than expected billings for cable and internet by a third party.

In light of all of the above, the tenant has not been successful in any of his claims against the landlord and his application is dismissed in its entirety.

Conclusion

The tenant's application is dismissed.

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: December 13, 2019

Residential Tenancy Branch