



Dispute Resolution Services

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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:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for loss or damage under the Act, regulation or tenancy agreement pursuant to section 67.

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 to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to a monetary order for compensation?

Background, Evidence

The tenant's testimony is as follows. The tenancy began on March 1, 2019 and ended on December 18, 2019 as a result of a notice to end tenancy. The tenant was obligated to pay \$1050.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$525.00 security deposit. The tenant testified that he provided his forwarding address on January 3, 2020 in person in writing to the landlord. The tenant is

seeking the return of his security deposit. The tenant is also seeking \$625.00 that was paid by the Ministry to the landlord for January's rent. The tenant testified that he had moved out on December 18, 2019 and was assured by the landlord that he wouldn't cash any future cheques. The tenant testified that the landlord cashed his cheque on December 24, 2019. The tenant testified that he eventually got some of the original \$625.00 back from the Ministry but wasn't sure as to how much.

The landlord gave the following testimony. The landlord testified that he received the tenants forwarding address on January 3, 2020. The landlord testified that the tenants claim is frivolous and that it should be dismissed. The landlord testified that the tenant left two to three thousand dollars of damage to the unit. The landlord testified that he didn't know he had to file an application to retain the deposit and that he didn't know he needed the tenant's permission to retain it for damages.

Analysis

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

The tenant said he is applying for the return of 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.

Based on the testimony of the tenant, the documentary evidence before me and the landlords confirmation that he did not have written authorization to retain the deposit and that he did not file an application to retain it at any point, 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 in the amount of $\$525.00 \times 2 = \1050.00 .

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant is also seeking the recovery of the January rent cheque of \$625.00 that was issued by the Ministry. The tenant testified that he received some money for January but was unsure of the amount. The landlord testified that the cheque was issued to him for rent and utilities and that the tenant is not entitled to any of it. As noted above, the applicant bears the responsibility to prove their claim. The tenant was unclear and unsure as to the amount of actual January rent that he was pursuing, accordingly; I dismiss this portion of his application for insufficient evidence.

It is worth noting, the landlord was very upset that his claims for damages and costs were not part of this hearing. It was explained in great detail on several occasions to both parties that this decision would only address the items applied for in this application. It was further explained that both parties are at liberty to file a separate application for any other unresolved issues if they so choose.

Conclusion

The tenant has established a claim for \$1050.00. I grant the tenant an order under section 67 for the balance due of \$1050.00. 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: March 20, 2020

Residential Tenancy Branch