



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL REALTY
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDCT

Introduction

On May 14, 2020, the Tenant made an Application for Dispute Resolution seeking a return of the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”) and seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

The Tenant attended the hearing, and D.H. attended the hearing as an agent for the Landlord. All parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord with a Notice of Hearing and evidence package by registered mail on May 19, 2020, and D.H. confirmed that the Landlord received this package. Based on the undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served this package. As well, I have accepted the Tenant’s evidence and will consider it when rendering this Decision. However, as the Tenant advised that his digital, video evidence was not served to the Landlord, I have excluded this digital evidence and will not consider it when rendering this Decision.

D.H. advised that he did not know if the Tenant was served the Landlord’s evidence and the Tenant stated that he did not receive any evidence from the Landlord. As it is not clear if the Landlord’s evidence has been served to the Tenant, I have excluded the Landlord’s evidence and will not consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of the security deposit?
- Is the Tenant entitled to a Monetary Order for compensation?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on February 12, 2019 and a series of short-term tenancy agreements were subsequently signed. The tenancy ended when the Tenant returned the keys by sliding them under the Landlord's office door on January 3, 2020. Rent was established at \$575.00 per month and was due on the first day of each month. A security deposit of \$287.50 was also paid. Copies of the signed tenancy agreements were submitted as documentary evidence.

All parties also agreed that the Tenant provided the Landlord with his forwarding address in writing on an envelope slid under the Landlord's office door on January 3, 2020. D.H. confirmed that he knew this was the Tenant's forwarding address in writing and that the Landlord is still holding the Tenant's security deposit.

The Tenant advised that in addition to seeking double his security deposit, he was also seeking compensation in the amount of **\$600.00** because the entire building was infested with rats and he was forced to live like this until he gave up vacant possession of the rental unit. He stated that the rats were entering the building through the heating vents and they were in the building even before he moved in. He submitted that he talked to D.H. in March 2019 about the rat issue and he was provided with some traps. These traps were ineffective, and he then talked to D.H. again in September 2019. D.H. accused the Tenant of being responsible for the problem because he left food out to attract the rats. The Tenant denied that he left food out. He is seeking this compensation because the rats have soiled his clothing, and they have also destroyed his clothing and bedding.

D.H. denied that the building was infested with rats; however, he confirmed that there were mice in the building and that this was an ongoing issue since before the Tenant moved in. He stated that the Landlord has a pest management company that visits the building monthly, and continually manages this issue to the best of their ability. He

stated that the Tenant is responsible for mice in his rental unit because he had left food out and the mice had actually built a home in one of his chairs. D.H. confirmed that he had mice in his own kitchen; however, as he does not leave food out, there is no problem.

The Tenant denied leaving food out and claimed that his neighbour had mice as well; however, he also contradictorily stated that he did leave out a “couple of bags of bread”. He advised that his request of \$600.00 is the cost of the loss of his clothing and bedding, and the loss of having to live in the rental unit that was infested with rodents. He submitted pictures as documentary to support this position.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant’s forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, I am satisfied that the Landlord had the Tenant’s forwarding address in writing on January 3, 2020. As the tenancy ended on this date as well, this is the date which initiated the 15-day time limit for the Landlord to deal with the deposit. The undisputed evidence before me is that the Landlord did not make an Application to claim against the deposit, nor was the deposit returned in full. As the Landlord did not comply with the requirements of the *Act*, I am satisfied that the doubling provisions do apply to the security deposit. As such, I grant the Tenant a monetary award in the amount of **\$575.00**.

With respect to the Tenant’s claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, “It is up to the party who is claiming compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or

loss”, and that “the value of the damage or loss is established by the evidence provided.”

Section 32 of the *Act* outlines that the Landlord “must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.”

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

Regarding the Tenant’s claim for compensation owed to him in the amount of \$600.00, I find it important to note that Section 32 of the *Act* requires the Landlord to provide a rental unit that complies with health, safety, and housing standards required by law, and D.H. confirmed that the building has had a mouse infestation since before the tenancy started that required monthly pest control treatments. Based on the undisputed evidence that this mouse infestation exists and that they were prevalent in the rental unit, as well as D.H.’s unit, I am satisfied that the Landlord has not provided the Tenant with a rental unit that complies with health, safety, and housing standards required by law.

While D.H. claimed that the Landlord had been dealing with this issue to the best of their ability, I do not find it acceptable that this infestation has not been rectified in at least over a year. As it is undisputed that there was this ongoing problem with a mouse infestation, as the Tenant advised the Landlord of this problem, and as this situation was not rectified in a timely manner as required by the *Act*, I am satisfied that the Landlord has breached the *Act*.

When assessing the amount of this claim, a component of the four-part test is mitigation and the Tenant is obligated to demonstrate that he mitigated any loss. However, other than telling the D.H. about the problem twice, he did not file for Dispute Resolution to have this situation remedied during his tenancy or do anything else to mitigate his loss. As the Tenant did not mitigate, I do not find that the Tenant has substantiated a loss equivalent to the entire amount he claimed for. Given that I am satisfied that there was an ongoing breach of the *Act*, but as the Tenant took few steps, if any, to correct the Landlord's contraventions of the *Act*, I find that the Tenant has corroborated a loss equivalent to **\$300.00** only.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Item	Amount
Double the security deposit	\$575.00
Compensation for mouse infestation	\$300.00
Total Monetary Award	\$875.00

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$875.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this 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 15, 2020

Residential Tenancy Branch