



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order for the return of his security and pet damage deposits that the Landlord is holding without cause; and to recover the \$100.00 cost of their Application filing fee.

The Tenant appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

I explained the hearing process to the Tenant and gave him an opportunity to ask questions about the hearing process. During the hearing the Tenant was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that he served the Landlord with the Notice of Hearing documents in person on February 14, 2021. The Tenant said that the Landlord opened his door with his wife and accepted the documents. He said everything he had uploaded to the RTB was contained in the documents he served to the Landlord. I find that the Landlord was served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

Preliminary and Procedural Matters

The Tenant provided his email address in the Application, and he confirmed this in the hearing. He also confirmed his understanding that the Decision would be sent to both Parties and any Orders sent to the appropriate Party.

I advised the Tenant that he is not allowed to record the hearing, and that if he was recording it, he was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

In the hearing, the Tenant said the periodic tenancy began on January 1, 2017, with a monthly rent of \$2,000.00, that rose to \$2,600.00, and was payable on the first day of each month. The Tenant confirmed that he paid the Landlord a security deposit of \$1,000.00, and a pet damage deposit of \$1,000.00, and that the Landlord did not return either deposit to the Tenant.

The Tenant said that the tenancy ended on January 14, 2020, after the rental unit was gutted by a fire on January 4, 2020. The Tenant said he could not remember when or if he gave his forwarding address to the Landlord in writing when he moved out.

The Tenant said he seeks the return of his deposits, and \$2,600.00 for February 2020 rent that he said the Landlord cashed in April 2020, even though the Tenant no longer lived in the rental unit. The Tenant also said on his Application that he seeks the return of part of the rent he paid in January; he claims \$1,342.00; however, in the hearing, the Tenant said that he seeks half of the rent he paid in January, which would have been \$1,300.00, as he said he paid the Landlord \$2,600.00 in rent for January 2020. The Tenant said that the residential property is being rebuilt, but that no one lives there yet.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 38 of the Act states that a landlord must do one of two things at the end of the tenancy. The Landlord must, within 15 days of the later of the end of the tenancy and receiving the tenant's forwarding address in writing, (i) repay any security deposit and/or pet damage deposit; **or** (ii) apply for dispute resolution claiming against the security deposit and/or pet damage deposit. If the Landlord does not do one of these actions within this timeframe, the landlord is liable to pay the tenant double the security and/or pet damage deposit(s) pursuant to section 38(6) of the Act.

In terms of the Tenant's claim for his security and pet damage deposits back, I find that the Tenant is premature in making this request, as I find he did not provide sufficient evidence that he provided his forwarding address and a request for the return of the deposits to the Landlord in writing.

As a result, I find that **the Landlord has now received the Tenant's forwarding address in writing** with the Tenant's service of the Notice of Hearing to the Landlord. I find that the Landlord has been advised of this address as of the date of this Decision; I, therefore, **Order the Landlord within 15 days of the date on this Decision** to carry out one of the actions set out in the second last paragraph. If the Landlord does not comply with this Order within 15 days, the Tenant may apply for dispute resolution for the **return of double the deposits**, pursuant to section 38(6) of the Act.

Regarding the Tenant's claim for the return of half the rent for January and all the rent for February 2020, I find the following. The Tenant's evidence is that there was a fire early in January 2020, which made the rental unit uninhabitable. Section 92 of the Act states that the *Frustrated Contract Act* and the doctrine of frustration of contract apply to tenancy agreements. In this case, there is no evidence before me that the fire was caused by either Party. Frustration of a contract is very rare, and it means that the frustration was not caused by either party.

Section 5 of the *Frustrated Contract Act* states:

Adjustment of rights and liabilities

5 (1) In this section, "benefit" means something done in the fulfillment of contractual obligations, whether or not the person for whose benefit it was done received the benefit.

(2) Subject to section 6, every party to a contract to which this Act applies is entitled to restitution from the other party or parties to the contract for benefits created by the party's performance or part performance of the contract.

(3) Every party to a contract to which this Act applies is relieved from fulfilling obligations under the contract that were required to be performed before the frustration or avoidance but were not performed, except insofar as some other party to the contract has become entitled to damages for consequential loss as a result of the failure to fulfill those obligations.

(4) If the circumstances giving rise to the frustration or avoidance cause a total or partial loss in value of a benefit to a party required to make restitution under subsection (2), that loss must be apportioned equally between the party required to make restitution and the party to whom the restitution is required to be made.

[emphasis added]

As there is no evidence before me suggesting that the exceptions clause of section 6 of the *Frustrated Contract Act* applies, I, therefore, find that section 5 (4) applies to this situation, such that the Parties must apportion the loss suffered by the frustration of the contract. I, therefore, find that the burden of the remaining rent for January 2020, should be apportioned between the Parties, such that they are each liable to pay half of the remaining rent for January 2020. I, therefore, award the Tenant with **\$650.00** from the Landlord as one quarter of the rent for January 2020, pursuant to sections 67 and 92 of the Act, and section 5 of the *Frustrated Contract Act*.

Further, I find that the Landlord was careless or imprudent to have cashed the Tenant's pre-paid rent cheque for February 2020 in April 2020. I, therefore, award the Tenant with **\$2,600.00** from the Landlord, as repayment of the Tenant's pre-payment of February 2020, pursuant to section 67 of the Act.

Accordingly, I grant the Tenant a Monetary Order of **\$3,250.00** from the Landlord, pursuant to section 67 of the Act.

Summary

In summary, I have ordered the Landlord to pay the Tenant the following amounts:

The Landlord is cautioned to act quickly in dealing with the Tenant's \$1,000.00 security deposit and \$1,000.00 pet damage deposit, as noted on the last page above.

The Landlord is **Ordered** to return the Tenant's security and pet damage deposits of \$1,000.00 each within 15 days of the date of this Decision, or to apply for dispute resolution to retain some or all of the **\$2,000.00** deposits within this timeline.

The Tenant is awarded **\$650.00** from the Landlord as the return of one quarter of the January 2020 rent to the Tenant, pursuant to sections 67 and 92 of the Act, and section 5 of the *Frustrated Contract Act*.

The Tenant is awarded **\$2,600.00** from the Landlord for the return of the February 2020 rent the Tenant had pre-paid with a post-dated cheque, which the Landlord had cashed in April 2020, pursuant to section 67 of the Act.

Given his success in this Application, I also award the Tenant with recovery of the **\$100.00** Application filing fee, pursuant to section 72 of the Act.

Accordingly, I award the Tenant with a Monetary Order for **\$3,350.00** from the Landlord, pursuant to section 67 of the Act.

Conclusion

The Tenant is successful in his Application for compensation from the Landlord in the amount of \$3,350.00, as the Tenant provided sufficient evidence to establish this compensation owing to him by the Landlord.

I grant the Tenant a Monetary Order from the Landlord, pursuant to section 67 of the Act in the amount of **\$3,350.00**. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) 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: June 22, 2021

Residential Tenancy Branch