



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT

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 return of rent paid, and for the return of the portion of the security deposit that was withheld by the landlord.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on February 12, 2021, a Canada post tracking number was provided as evidence of service.

The Canada post history shows the package was successfully delivered to the landlord on February 16, 2021. I find that the landlord has been duly served in accordance with the Act.

The tenant appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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 return of rent paid?

Is the tenant entitled to the return of security deposit that was withheld pay the landlord?

Background and Evidence

The parties entered into a fixed term tenancy which began on September 1, 2020 and was to expire on August 31, 2021. Rent in the amount of \$2,400.00 was payable on the first of each month. The tenant paid a security deposit of \$1,200.00. The tenancy ended on December 15, 2020.

The tenant claims as follows:

a.	Return of rent from December 15 to 31, 2020	\$1,200.00
b.	Return of double the amount landlord kept from Security Deposit (\$100 x2)	\$ 200.00
	Total claimed	\$1,400.00

The tenant testified that they came to an agreement with the landlord to end the fixed term agreement on December 15, 2020. The tenant stated that they had to pay the landlord the full month of rent for December 2020, on the basis that a new tenant would not be found for January 1, 2021; however, the landlord found a new tenant that took over the rental unit on December 15, 2020. Filed in evidence is a copy of the agreement.

The tenant testified that the new renter was moving in on the same day they were moving out. The tenant stated they should be entitled to the return of rent paid from December 15 to 31, 2020, as the landlord did not suffer a loss. The tenant seeks to recover rent paid in the amount of \$1,200.00. Filed in evidence is a text message between the parties where the landlord stated a new tenant had been found.

The tenant testified that the landlord returned their security deposit on the day they were vacating the rental unit; however, the landlord retain the amount of \$100.00 for cleaning, which they did not agree to. The tenant stated they gave the landlord their new address on December 15, 2020, and again in their application for dispute resolution. The tenant stated they should be entitled to double the amount the landlord unlawfully retain in the amount of \$200.00.

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 claim.

In this case, the landlord was served with the tenant's application for dispute resolution on February 16, 2021. The landlord was also sent an email notification sent by the Residential Tenancy Branch on June 4, 2021, reminding them of the hearing scheduled for today's date, June 7, 2021. The landlord did not appear. Therefore, I find the tenant's application is unopposed.

In this case, I find there was no breach of the Act by the landlord, as it appears the tenant wanted to be release from the fixed term agreement. When a fixed term tenancy is ended by the tenant the landlord is entitled to be in the same position as if the tenancy had not ended by the tenant. This would include compensating the landlord for loss of rent, or the difference between the rent the tenant was obligated to pay under their tenancy agreement and the rent collected from the new tenant, as set out in the Residential Tenancy Branch Guideline 3.

However, in this case the tenant paid the full rent for December 2020 and vacated December 15, 2020. A new renter moved into the rental unit on the same day. I am satisfied that the landlord either collected rent from the new renter or were obligated to do so to mitigate any loss.

I find the tenant is entitled to the return of rent paid from December 15 to December 31, 2020, as this would be an unjust enrichment. The landlord is only entitled to be in the same position, not an enriched position. Therefore, I find the tenant is entitled to recover the amount of rent paid in the amount of **\$1,200.00**, pursuant to section 62(2) of the Act.

In this case, I am satisfied that the landlord kept \$100.00 from the security deposit without the written consent of the tenant. However, I am not satisfied that the tenant gave the landlord their forwarding address in writing requesting the return of their security deposit prior to making their application as there was no supporting evidence to support this and a portion of the security deposit was returned to the tenant at the rental unit when they vacated. I find the tenant has provided insufficient evidence to support this portion of their application. Therefore, I dismiss this portion of their claim with leave to reapply.

The tenant is entitled to send to the landlord their forwarding address in writing requesting the balance of their security deposit be returned. If the landlord does not repay the amount of \$100.00 or make an application claiming against this amount within 15 days after they receive the tenant's forward address, the tenant is at liberty to apply for double the security deposit of \$1,200.00, less the amount returned. (\$2,400.00 - \$1,100.00 = \$1,300.00)

I find that the tenant has established a total monetary claim of **\$1,200.00** comprised of the above described amount. 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 the return of rent paid in the above noted amount. The tenant is granted leave to reapply for the return of the balance of the security deposit held by the landlord.

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 08, 2021

Residential Tenancy Branch