



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSDS-DR, FFT

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 as compensation for loss or damage pursuant to section 67; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and arguments. The landlord's son acknowledged receipt of evidence submitted by the tenant initially, but then later stated he wasn't served any of the evidence. The tenant filed an application for substituted service to serve the landlord the Notice of Hearing documents and evidence by way of email, which was granted.

The tenant provided a copy of the email with attachments and a subsequent email that provided a read receipt as proof of delivery. The emails were accepted and opened on September 18, 2022. The tenant has satisfied me that the landlord was served notice of this application and their evidence in accordance with section 89 of the Act. 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?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenant's testimony is as follows. The tenancy was to begin on April 25, 2022. The tenant was to pay \$4500.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$2250.00 security deposit and \$900.00 as a pro rated amount of rent. The tenant testified that a written condition inspection report was conducted at move in that noted numerous deficiencies. The tenant testified that the unit was dirty and dusty, the landlord still had all her personal belongings and furniture in the unit and garage, the appliances were either damaged or unusable. The tenant testified that he told the landlord of these issues and she assured him that she would have the unit ready for him by April 27, 2022. The tenant testified that he returned on that day to find the unit only marginally improved.

The tenant testified that he had paid his deposit on March 21, 2022 allowing the landlord ample opportunity to prepare the unit. The tenant testified that while he was there, realtors were showing potential buyers the home despite the landlord promising the tenant that she would take the home off the market. The tenant testified that the landlord did not meet her contractual obligations by providing a unit in reasonable condition as promised. The tenant testified that he provided his forwarding address on April 28, 2022 only to receive a reply from the landlord asking for one months rent plus GST as a "penalty". The tenant is seeking the \$900.00 of prorated rent, the return of double his deposits $\$2250.00 + \$2250.00 \times 2 = \$4500.00$. The tenant is also seeking the recovery of the \$100.00 filing fee for a total claim of \$5500.00.

TL gave the following testimony. TL testified that he and his family dispute the claim made by the tenant. TL testified that he has extensive legal expertise and if given an opportunity, he could provide disputing evidence. TL testified that the tenant is the one that broke the agreement and should not be entitled to any compensation.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, 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 has provided extensive documentation to support his claim. I find that the landlord did not provide the rental unit as promised despite having over one month to prepare it. I find that the tenant is entitled to the return of the \$900.00 prorated rent payment.

The tenant said he is applying for the return of double 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.

TL confirmed that the landlord has not returned the deposit or has filed an application seeking to retain it. Based on the testimony of the tenant, the documentary evidence before me and in the absence of any disputing evidence from the landlord, 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 \$4500.00.

The tenant is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenant has established a claim for \$5500.00. I grant the tenant an order under section 67 for the balance due of \$5500.00. 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: May 29, 2023

Residential Tenancy Branch