



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the tenant for a Monetary Order under the *Residential Tenancy Act* (the Act), for return of the security deposit, one month's compensation for a Section 49, 2 Month Notice to end tenancy for landlord's use of property, and to recover the filing fee.

Both parties appeared, and gave testimony and were provided the opportunity to make relevant submissions, in writing and orally.

The tenant clarified their claim as follows:

- Compensation equivalent to one month's rent as per Section 51
- Return of security deposit - \$400.00, plus double the same amount as per Section 38(6)
- Recover filing fee - \$50, as per Section 72

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

This tenancy began April 01, 2011 and the tenant has since vacated. Rent payable was in the amount of \$775.00 per month. At the start of the tenancy the landlord collected a security deposit in the amount of \$400.00, which the landlord still retains. On November 30, 2012 the landlord gave the tenant a 2 Month Notice to End Tenancy for landlord's Use and the tenant acted on this Notice to End and vacated the rental unit on February 03, 2012. The landlord did not conduct a move out inspection with the tenant.

The parties agree that the tenant did not receive compensation from the landlord, as a consequence for receiving the 2 Month Notice to End, as stipulated within the Notice, and as per Section 51 of the Act.

The parties also agree that the landlord has not returned the security deposit or made application to retain the deposit within 15 days of receiving the tenant's forwarding address in writing on February 03, 2012. The tenant provided a copy of the document given to the landlord containing their written forwarding address into evidence and the

landlord agreed that they received it on February 03, 2012. The landlord claims they sent the tenant a cheque on February 15, 2012, which the tenant provided into evidence. The tenant testified they received the cheque on February 28, 2012. The cheque particulars contains the date '2012' – and no month or day particulars. The tenant testified they attempted to cash the cheque but their financial institution would not honor the cheque. The landlord has not replaced the cheque or otherwise returned the security deposit.

Analysis

The applicant is responsible to prove their claims as advanced.

I find that the landlord has not provided the tenant with compensation as directed by Section 51 of the Act, which in part, states:

Tenant's compensation: section 49 notice

- 51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

As a result, I grant the tenant the equivalent of one month's rent payable under the tenancy agreement in the amount of **\$775.00**.

In respect to the tenant's claim for the security deposit and the landlord's testimony on this matter, I find the landlord's testimony, in light of the tenant's evidence is insufficient to support their claim that they sent the tenant a cheque on February 15, 2012.

Section 38(1) of the Act provides as follows (emphasis for ease)

- 38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing on February 03, 2012, and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$400.00 and was obligated under Section 38 to return this amount. The amount which is doubled is the \$400.00 original amount of the deposit. As a result I find the tenant has established an entitlement claim for **\$800.00**. The tenant is further entitled to recovery of the **\$50.00** filing fee.

Calculation for Monetary Order

Section 51 compensation – 2 month Notice to End	\$775.00
Filing Fees for the cost of this application	50.00
Total Monetary Award	\$1625.00

Conclusion

I grant the tenant a Monetary Order under section 67 for the sum of **\$1625.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on the parties.

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 05, 2012

Residential Tenancy Branch