



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package and the submitted documentary evidence in person on August 31, 2017 with a witness. The landlord did not submit any documentary evidence. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

At the outset, the named landlord, M.N.R. argued that he was not the landlord. The tenant argued that he was. Both parties agreed that a short term tenancy was agreed to between the two parties for a 3 month period between March 1, 2017 and May 31, 2017. An offer of \$1,490.00 for monthly rent was agreed to by both parties. I find based upon the undisputed evidence of both parties that an offer and an acceptance of a tenancy agreement was made between these two parties and as such, the named landlord is the named tenant's landlord.

At the end of the hearing both parties confirmed their mailing addresses as per the tenant's application for dispute. The tenant argued that the landlord is no longer residing at the provided address. The landlord stated that he still receives mail at the documented address and still regularly picks up mail at that location for the indefinite future. As such, the landlord has confirmed his mailing address as per the application for dispute.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss, return of the security deposit and recovery of the filing fee?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that a verbal tenancy agreement was made in which the tenancy began on March 1, 2017 and ended on May 31, 2017. The monthly rent was \$1,490.00 and a security deposit of \$700.00 was paid. The tenant provided copies of etransfer payments to the landlord of :

\$700.00	security deposit dated February 2, 2017
\$1,490.00	March 2017 rent dated February 15, 2017
\$2,980.00	April and May 2017 rent dated February 28, 2017

The tenant seeks a monetary claim of \$3,170.00 which consists of:

\$1,180.00	Return of Outstanding Portion of Security Deposit, \$480.00 Compensation, Fail to Comply, Sec. 38 (6), \$700.00
\$1,490.00	Compensation, 1 Month (May 2017) Rent (\$1,490.00), tenant coerced to accept a three month tenancy
\$500.00	Estimated Compensation, 2 months (March and April) @ \$250.00 per month, landlord misrepresenting square footage of rental premises

The tenant claims that the landlord failed to return \$480.00 of the entire \$700.00 security deposit after providing his forwarding address in writing for the return of the security deposit on June 12, 2017. Landlord claims that he withheld \$220.00 and return \$480.00 due to cleaning issues with the rental unit. The landlord did not provide any evidence to support his claim that \$480.00 was returned to the tenant. The tenant argues that only \$220.00 was returned and that \$480.00 is outstanding from the landlord. Although neither party was able to provide direct evidence of how much of the original \$700.00 was returned by the landlord to the tenant, the tenant has provided a copy of an email dated July 20, 2017 from the landlord to the tenant

stating that he “took care of all medical expenses and just charge you \$480 for cleaning in home and sent out items.”

The landlord confirmed in his direct testimony that an application for dispute was not filed seeking authorization to keep the security deposit against a claim for damages nor did the tenant give permission for the landlord to retain it.

The tenant clarified that the claim for return of \$1,490.00 in compensation which is equal to one months' rent was for occupying the rental unit for a 3rd month against his wishes. The tenant claims that the landlord changed the duration of the tenancy from 2 months to 3 months without his permission. Both parties confirmed that the tenant paid a separate \$1,490.00 monthly rent for March 2017 and then a subsequent \$2,980.00 for April and May 2017 in a separate transaction on February 28, 2017. The tenant provided undisputed testimony that he had indicated to the landlord that he “preferred” to not want to occupy the rental space for 3 months instead of the 2 months. The tenant stated at no time did he “formally” notify the landlord that he did not want the 3 month tenancy or give the landlord notice to end the tenancy.

The tenant seeks \$500.00 as compensation (\$250.00 per month for a 2 month period) for the landlord misrepresenting the rental unit as an 850 sq. ft. premises instead of the actual 600 sq. ft. The tenant stated he did not view or inspect the premises before agreeing to and paying the offered tenancy for \$1,490.00. The tenant stated that he did not suffer any actual losses, but calculates the claim based upon comparing another rental unit in the same building at \$900.00 per month with a difference of \$500.00 per month and offsetting the issue of a furnished unit.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, I find on a balance of probabilities that I prefer the evidence of the tenant over that of the landlord in this claim of \$480.00 being withheld by the landlord. Although both parties argued over how much was returned, \$220.00 by the tenant and \$480.00 by the landlord. Neither party provided any clear evidence on the returned amount. I rely on the tenant's submitted copy of an email dated July 20, 2017 from the landlord to the tenant which states in part that the landlord would be withholding \$480.00 due to cleaning. As such, I find that the landlord withheld \$480.00.

Both parties confirmed in their direct testimonies that the landlord did not return the full \$700.00 security deposit within 15 days of receiving the tenant's forwarding address in writing on June 12, 2017. As such, I find that the landlord failed to comply with section 38 (1) of the Act by returning all of the \$700.00 security deposit. The tenant is entitled to return of the outstanding portion of the security deposit of \$480.00.

I also find pursuant to section 38 (6) that the landlord having failed to comply with section 38 (1) by returning all of the security deposit is also entitled to compensation equal to the amount of the \$700.00 security deposit. Both parties confirmed that the landlord did not apply for dispute to retain the security deposit nor did the tenant give permission for the landlord to retain it. The tenant has established a claim for the \$700.00 in compensation.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the tenant has failed to establish a claim for compensation for recovery of \$1,490.00 which is equal to one month's rent. The tenant claims that he was "unjustifiably coerced" into accepting a longer sublet term, but confirmed that at no time did he refuse the landlord's extended term offer nor did he give notice to end the tenancy. The tenant stated that he provided his "preference" to the landlord for a 2 month term. In any event I find that the tenant also re-confirmed the 3 month term by providing 2 months rent of \$2,980.00 in a e-transfer on February 28, 2017 before the start of the tenancy on March 1, 2017. This portion of the tenant's claim is dismissed.

On the tenant's last item of claim of \$500.00 for misrepresenting the square footage of the rental premises. The tenant provided undisputed testimony that the landlord had advertised the rental premises as 850 sq. ft as per the submitted copy of the advertisement. The landlord did not dispute this claim by the tenant. The tenant also argues that the actual square footage is 600 sq. ft. The tenant argues that a comparison of another unfurnished unit in the same building is \$900.00 per month, the tenant quantifies the claim by stating that the difference in monthly rent of \$500 per month was calculated and offsets it against consideration as the rental premises was furnished in comparison. As such the tenant's claim for \$500.00 over a 2 month period for \$250.00 is sought. I find that the tenant's claim for compensation of \$500.00 is dismissed. The tenant has failed to provide any basis for this claim as no actual expenses or losses were incurred by the tenant. The tenant provided undisputed affirmed evidence that he accepted the tenancy from the landlord without inspecting it.

The tenant has established a total monetary claim of \$1,180.00. The tenant having been partially successful is only able to claim recovery of \$50.00 of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$1,230.00.

This order must be served upon the tenant. Should the landlord fail to comply with this order, the 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: March 08, 2018

Residential Tenancy Branch