



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The landlord's sister acted as the landlord's translator during this hearing. During the course of the hearing, it became apparent that the landlord's sister had been directly involved in some of the events that had a bearing on this dispute. As the landlord's sister had acted as the landlord's agent during important events relating to this tenancy, she was sworn in as a witness and gave her own sworn testimony during this hearing.

The tenant testified that she tried to hand a copy of the tenants' dispute resolution hearing package to the landlord on October 18, 2011. She said that the landlord refused to answer the door that day. However, she testified that she was able to hand the hearing package to the landlord's son, M, later that day. The landlord confirmed that she did receive the tenants' dispute resolution hearing package through her son, M. I am satisfied that the tenants' dispute resolution hearing package was received by the landlord and that the landlord had ample time and opportunity to prepare for this hearing.

The tenant testified that she sent the landlord her evidence package including a series of photographs of the condition of the rental unit at the end of this tenancy. The landlord denied having received the tenants' photographs. As my decision does not turn on this evidence, I have not considered this aspect of the tenants' submission into written evidence. The landlord provided no written or photographic evidence for this hearing.

Issues(s) to be Decided

Are the tenants entitled to obtain a return of all or a portion of their security deposit?

Are the tenants entitled to recover their filing fee for their application from the landlord?

Background and Evidence

The tenant provided undisputed oral testimony that this month-to-month tenancy commenced on June 1, 2010. Monthly rent was set at \$900.00. The landlord continues to hold the tenants' \$450.00 security deposit. The tenant testified that the tenants paid this security deposit on or about May 24, 2010. The landlord testified that this payment was made on June 1, 2010. Nothing turns on this disagreement as to when the security deposit was paid.

The parties agreed that there was no written tenancy agreement between them and that the tenancy ended without either party providing anything in writing to end the tenancy.

The landlord initially testified that the tenants did not give any notice that they were ending their tenancy. The female tenant (the tenant) gave undisputed oral testimony that the landlord (or as it turned out the landlord's sister) gave oral notice that the landlord wanted to use the tenants' rental unit so that the landlord's sister could move into the premises. The tenant and the landlord's sister agreed that the landlord's sister acting on the landlord's behalf initially contacted the tenants in July and asked them to vacate the rental unit in one month. The tenant identified July 28, 2011 as the date of the landlord's sister's initial request to vacate the rental unit. The parties agreed that the tenant informed the landlord's sister at that time that the landlord could not issue a 1 Month Notice to End this tenancy for landlord use of the property, but could issue a 2 Month Notice. The tenant said that the landlord told them they could move out earlier if they could find a place sooner than October 1, 2011. The tenants were able to find alternative accommodation and vacated the rental unit on August 27, 2011. The tenant said that she was only willing to leave the key with the landlord if the landlord committed to return their security deposit. The tenant said that she left the key for the landlord on September 1, 2011. The landlord testified that the tenant did not return the key until mid-September 2011.

The tenants applied for a return of their \$450.00 security deposit plus recovery of the \$50.00 filing fee for their application for dispute resolution.

The tenant entered into written evidence a copy of a letter the tenants sent the landlord requesting the return of their security deposit. Although this letter was undated and did not contain the postal code for the tenants' new address, they did provide their new street address and the city where they were living. This letter also included a number of

telephone numbers where the tenants could be reached to discuss the landlord's return of their security deposit. The tenant said that she tried to deliver this to the landlord on September 14, 2011, but when the landlord refused to answer the door she placed it in the landlord's mailbox. The landlord testified that she did not receive this letter from the tenant and did not have the tenants' new mailing address.

There was also conflicting evidence regarding the joint move-in and joint move-out condition inspections and reports. Early in the hearing, the landlord testified that a joint move-in condition inspection was conducted on June 1, 2010 and a joint move-out condition inspection was conducted on September 1, 2011. The landlord also testified that condition inspection reports were issued following each of these inspections. The tenant testified that no joint move-in condition inspection occurred and that the landlord refused the tenants' request to conduct a joint move-out condition inspection. The tenant said that when the landlord refused to meet with her to conduct the move-out condition inspection on August 27, 2011, the tenant identified a second date on September 1, 2011 when she could make herself available to conduct this inspection. The parties agreed that a joint move-out condition inspection was conducted with the wife of the landlord's nephew acting on the landlord's behalf on September 1, 2011. After questioning on this point, the landlord reversed her earlier testimony and said that no condition inspection report was prepared or provided to the tenants for either the move-in or move-out condition inspections.

The landlord and her sister testified that the tenants damaged the rental unit during their tenancy. They did not submit any written or photographic evidence to support this assertion.

At a late stage in the hearing, the landlord's sister asked for an adjournment to enable the landlord to provide written evidence to contradict the tenants' claim for return of their security deposit. I denied this request, noting that if the landlord wished to make a claim for damage arising out of this tenancy, the landlord could file her own claim. I also noted that the absence of a joint move-in inspection and any report of the joint move-out inspection may be a factor that would be considered in a new application from the landlord.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord

must pay the tenant double the amount of the deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the provision by the tenant of the forwarding address in writing or the end of the tenancy, whichever occurs later.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if “at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.” No such written agreement is in effect.

In this case, there is disputed evidence regarding whether the tenants provided their forwarding address in writing to the landlord. Although the tenant testified that she left the undated letter she entered into written evidence in the landlord’s mailbox, the landlord testified that she never received this letter. Section 88(f) of the *Act* allows a tenant to leave a copy of this type of letter in a landlord’s mailbox. The tenants did not submit any evidence from anyone who witnessed the tenant leaving the undated letter in the landlord’s mailbox. At the hearing, the tenant was initially uncertain as to when she left this letter for the landlord. I also note that the letter does not provide a full and complete mailing address as it only noted that “If you do not wish to speak to me you can drop off a cheque for \$450.00 to my new address at 12345 C Crescent off of D Road in XYZ.”

As I am not satisfied that the tenants have proven to the extent required that they provided their complete forwarding address in writing to the landlord prior to their application for dispute resolution, I am not satisfied that the tenants are entitled to a monetary award equal to double their security deposit as outlined in section 38(6) of the *Act*. However, the tenancy has clearly ended and the landlord has not returned the tenants’ security deposit once she received the tenants’ new mailing address by way of the tenants’ application for dispute resolution. For these reasons, I am satisfied that the tenants have established their entitlement to a return of all of their \$450.00 security deposit pursuant to section 38 of the *Act* plus applicable interest. No interest is payable over this period. Based on the evidence before me, I issue a monetary award requiring the landlords to return the tenants’ \$450.00 security deposit forthwith.

Having been successful in this application, I find further that the tenants are entitled to recover the \$50.00 filing fee they paid for this application from the landlord.

Conclusion

I issue a monetary Order in the amount of \$500.00 in the tenants' favour requiring the landlord to return the tenants' security deposit and to reimburse the tenants for their filing fee for the tenants' application.

The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these final and binding Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: January 06, 2012

Residential Tenancy Branch