



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, RPP, FF, O

Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72; and
- other unspecified remedies.

The landlord did not attend this hearing, although I waited until 3:14 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 3:00 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The tenant testified that she sent a copy of her dispute resolution hearing package to the landlord by registered mail on May 4, 2012. She provided copies of the Canada Post Tracking Number and Customer Receipt and entered into written evidence a copy of the landlord's signature extracted from Canada Post's On-Line Tracking System to support her assertion that the landlord received her dispute resolution hearing package on May 10, 2012. I am satisfied that the tenant served her dispute resolution hearing package in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to obtain a portion of her security deposit from the landlord? Is the tenant entitled to recover her filing fee from the landlord? Should any other orders be issued against the landlord?

Background and Evidence

This six-month fixed term tenancy commenced on December 1, 2011. Monthly rent was set at \$850.00, payable in advance on the first of each month. The tenant gave undisputed oral and written evidence that she paid a \$850.00 security deposit on November 27, 2011. I note that a landlord is limited to requiring a security deposit equivalent to one-half month's rent for a tenancy.

The tenant testified that she vacated the rental premises on April 29, 2012 and handed the landlord her forwarding address in writing on April 30, 2012. She testified that the landlord returned \$400.00 of her security deposit on April 29, 2012. At that time, she signed a document the landlord provided to her which stated that the landlord would return the remaining portion of her security deposit if she and another tenant in the rental property repaired a microwave they shared. She testified that the landlord returned the remainder of the other tenant's security deposit after they repaired the handle of the microwave, but refused to return the rest of her security deposit.

The tenant applied for a monetary award of \$450.00 for the remainder of her security deposit. In the tenant's written evidence, she also referred to various personal possessions that went missing during her tenancy which she attributed to the landlord's actions. She did not attach a monetary amount to these losses. The maximum amount of monetary award I can consider under these circumstances is the \$450.00 she claimed in her application for dispute resolution plus her \$50.00 filing fee.

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 in full or file an Application for Dispute Resolution seeking an Order 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 return the tenant's security deposit in full plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. 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."

In this case, the landlord's obligation to return all of the tenant's security deposit within 15 days commenced on April 30, 2012.

Although the tenant did not have nor provide a copy of the agreement she signed with the landlord with respect to the security deposit, I am satisfied by her sworn testimony that she did in fact sign a document on April 29, 2012 in which the landlord was given conditional approval to retain the \$450.00 portion of her security deposit. The terms of this written agreement are open to interpretation and, for that reason, I do not find that the tenant is entitled to a monetary award pursuant to section 38(6) of the *Act*.

Due to the unclear nature of the agreement between the parties with respect to the return of the remainder of the tenant's security deposit and the apparent disagreement between the parties as to whether the conditions in their agreement had been met, the appropriate method whereby the tenant could obtain a return of the remainder of her security deposit would be by way of an application for dispute resolution. She has applied for a return of the remainder of her security deposit on the basis that she repaired the damage cited in the conditional agreement she signed with the landlord. If the landlord believed the tenant had not met the conditions in their agreement, he could have either submitted his own application for dispute resolution or attended this hearing to contest her application. He did neither. Based on the tenant's undisputed evidence, I find that the tenant has demonstrated that the conditions identified in the agreement she entered into with the landlord on April 29, 2012 have been met and she is entitled to a monetary award of \$450.00, the remainder of the tenant's security deposit. No interest is payable over this period.

Having been successful in this application, I find further that the tenant is entitled recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$500.00 which enables the tenant to recover the remainder of her security deposit and her filing fee for her application. The tenant is 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 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: June 01, 2012

Residential Tenancy Branch