



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNSD, FF

Introduction

This application was heard after review of a decision to grant the tenant's application for return of her security deposit. The landlord applied for review indicating that he had not received the dispute resolution package and therefore had no opportunity to attend the dispute resolution hearing. A new hearing was ordered.

The original hearing dated September 30, 2014 dealt with the tenant's application to return her security deposit pursuant to section 67 and 38 of the *Act*. At the original hearing, the tenant's application was successful. The arbitrator who considered the tenant's application issued a decision on September 30, 2014 (the original decision) in which the arbitrator issued a monetary award of \$900.00 in favour of the tenant plus the \$50.00 filing fee. A monetary order against the landlord for \$950.00 was granted. This original decision was suspended pending the review consideration decision and the decision on a new hearing, as ordered.

Subsequent to the ordering of a new hearing, the landlord made further application.

The landlord applied pursuant to the *Residential Tenancy Act* ("the *Act*") for orders as follows:

1. Monetary order for damage to the rental unit pursuant to Section 67;
2. To keep all of the security deposit pursuant to Section 38; and
3. Recovery of the filing fee paid for this application pursuant to Section 72 of the *Act*.

The landlord attended this January 2, 2015 hearing. The tenant did not. The landlord testified that the Dispute Resolution Application package had been sent by registered mail to the tenant on December 4, 2014. He provided a copy of his receipt and the tracking number. I find that, pursuant to section 89 and 90 of the *Act*, the tenant was deemed served with the Dispute Resolution Application package on December 9, 2014, 5 days after the mailing.

Issues to be Decided

Is the tenant entitled to a return of the security deposit or is the landlord entitled to retain the security deposit for damage to the unit?

Is the landlord entitled to a monetary award with respect to damage or loss as a result of this tenancy?

Is the tenant entitled to a monetary award equal to the security deposit because the landlord has failed to comply with the terms of 38(1) of the *Act*?

Are either the landlord or tenant entitled to recover their filing fees for their applications?

Background and Evidence

At the end of this tenancy, the landlord continued to hold a security deposit in the amount of \$450.00 that had been paid by the tenant on April 1, 2013.

The landlord testified that, while the tenant still lived in the rental unit, he replaced her refrigerator. He testified that the tenant may have broken the refrigerator when she was cleaning by tilting it and a hose was broken. The landlord provided no receipt nor provided any evidence to indicate the type of damage, cost to repair or replace the refrigerator. The landlord was unable to provide any further evidence to support the claim that the tenant was responsible for the repair or replacement of the refrigerator. The landlord testified that the tenant advised him that he could deduct the cost to repair the refrigerator from her security deposit.

The landlord testified that he conducted an inspection with the tenant but that no condition inspection report was completed or provided to the tenant, in accordance with section 35 of the *Act*. Furthermore, the landlord testified that he did not have a written agreement to confirm that the tenant would pay for the repair or replacement of the refrigerator.

The landlord testified that, at the end of the tenancy, the tenant provided a forwarding mailing address.

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 security deposit in full 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 return the tenant's security deposit plus applicable interest. Furthermore, if the landlord fails to comply with section 38(1), the landlord 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. In this case, the landlord had 15 days to take action after the end of the tenancy as the forwarding address was provided at that time. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant." As there is no evidence that the tenant has

given the landlord written authorization to retain any portion of his security deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

Based on the evidence and the relevant provisions of the *Residential Tenancy Act*, the landlord cannot make a claim against the tenant's security deposit since he had not complied with the requirements to agree in writing or file for dispute resolution to notify the tenant of a claim against that deposit. I dismiss the landlord's claim to keep the security deposit in this case.

After the review of the original decision, the landlord brought an application requesting a monetary award for damages as a result of this tenancy. His testimony is that he replaced a refrigerator that the tenant broke. The landlord did not provide sufficient testimony or documentary evidence to support the claim that the tenant broke the refrigerator in the rental unit and is therefore responsible for its repair or replacement. The landlord was unable to provide evidence that it was necessary to replace and not repair the refrigerator. The landlord did not provide any documentary evidence to support his testimony that a refrigerator had been purchased and at what cost. Based on these circumstances, I find that the landlord has not provided sufficient evidence to support a monetary claim against the tenant and I dismiss the landlord's application for a monetary order.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *Whether or not the landlord may have a valid monetary claim.*

I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenant has not explicitly waived her right to obtain an award of double the amount of her deposit pursuant to section 38 of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the value of her security deposit with interest calculated on the original amount only. No interest is payable in this case.

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

Having been unsuccessful in his application, I dismiss the landlord's claim to recover the filing fee for his application.

Conclusion

I allow the tenant's application and reinstate the original decision and monetary order of September 30, 2014. I confirm the original monetary order dated September 30, 2014 that the landlord pay to the tenant the sum of \$950.00. The original monetary order attached to the original decision of September 30, 2014 is reinstated and is in full force and effect.

As stated in the original decision, the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this reinstated Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the landlord's application without leave to reapply.

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 07, 2015

Residential Tenancy Branch

