



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDC, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for:

- a monetary order for loss as a result of the tenancy pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover the 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 their sworn testimony, and to make submissions. The tenant testified that he served the landlord with his Application for Dispute Resolution on January 8, 2015 by sending it registered mail. The landlord confirmed receipt of the dispute resolution package. I find the landlord deemed served with the package on January 13, 2015, 5 days after its registered mailing. The landlord testified that she served the tenant with her Application for Dispute Resolution on January 31, 2015 by registered mail. The tenant confirmed receipt of the dispute resolution package. Both landlord and tenant provided tracking information from Canada Post. I find the tenant deemed served with the landlord's package on February 5, 2015, 5 days after its mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for loss arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit towards any monetary award? Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to an order for the landlord to comply with the *Act*? Is the tenant entitled to a monetary award for the return of a portion of his pet damage and security deposits? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on a month to month basis on June 1, 2014. The rental amount of \$900.00 was payable on the first of each month. The tenant is no longer residing in the rental unit. The landlord testified that she continued to hold a security deposit of \$400.00 paid by the tenant on June 1, 2014. The landlord also required first and last month's rent at the time of the signing of the rental agreement. The landlord sought to retain the security deposit. The tenant sought the return of the security deposit.

The tenant testified that he vacated the premises on September 30, 2014 and that he provided the landlord with his forwarding address in writing on October 2, 2014. He provided the landlord with his forwarding address again in writing on November 10, 2014. In all of his correspondence to the landlord, the tenant requested that the landlord return the security deposit to that address. The tenant testified that, on November 5, 2014, he received a letter from the landlord stating that his security deposit would not be returned. The tenant testified that the \$400.00 security deposit has not been returned by the landlord.

The landlord testified that she did not believe she was required to return the tenant's security deposit because he did not give written notice of the end of his tenancy. She confirms, both in her testimony at hearing and in letters provided by the landlord, that she was aware that the tenant was vacating the residence on September 30, 2014 but submits that the tenant's lack of written notice should have consequences.

The landlord testified that she did not advertise to seek a new tenant at all until after the tenant had moved out. She testified that she re-rented the unit on October 15, 2014. She testified that the tenant left the rental unit neat and clean and stated that she did not know why she didn't advertise sooner. The landlord also stated that the tenant "got his last month's rent free" because he didn't have to pay her for it. However, she acknowledged that the tenant had paid that last month at the beginning of the tenancy she continued to hold that amount and applied it to his last month's rent.

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 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. In this case, the landlord had 15 days after the tenant provided his forwarding address. The tenant testified that the forwarding address was provided by October 2, 2014. The landlord testified that the forwarding address was provided by November 10, 2014.

Even if I accept the testimony of the landlord, I note that the landlord's obligation to return the security deposit or file to retain the deposit within 15 days would have been triggered on November 10, 2014. There is evidence submitted for this hearing that suggest the landlord was in possession of the address before that date. Despite having a vacant rental unit and forwarding address for her former tenant, the landlord did not file an Application for Dispute Resolution until January 28, 2015, when she did so in response to the tenant's application for return of his deposit.

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 the landlord may retain the amount to pay a liability or obligation of the tenant." There is no evidence that the tenant has given the landlord written authorization at the end of this tenancy to retain any portion of his security deposit. The tenant provided evidence that he made at least two requests for the return of his security deposit before applying for Dispute Resolution. Therefore, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

The landlord seeks to retain the deposit in partial satisfaction of their claim for loss of rent for the 30 day notice period. The evidence of both parties is that the tenant gave 30 days' notice but did not provide that notice in writing as required by the *Act*. Pursuant to section 67 of the *Act*, the landlord must not only claim that she suffered a loss as a result of the tenancy or actions of the tenant but that she must prove that loss. The landlord also provided no evidence to support her position that she was unable to re-rent the rental unit or evidence to show when the next tenancy began. The landlord testified that she had not attempted to re-rent the unit before the tenant moved out. The landlord did not prove that she suffered a tangible loss as a result of this tenancy or that she attempted to mitigate that loss to the best of her ability. Without any proof to support her application for a monetary award and to retain the tenant's security deposit to satisfy that claim, I find that the landlord is not entitled to a monetary award or to retain the tenant's security deposit. I direct that the landlord return the security deposit amount to the tenant.

The following provisions of Policy Guideline No. 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 within the 15 days required nor returned the tenant's security deposit in that time period. The tenant gave sworn oral testimony that he has not waived their rights to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*.

Based on the evidence before me including the clear and candid testimony of the tenant; the documentary evidence submitted by the tenant in support of his testimony and the lack of evidence provided by the landlord in support of her position, I find that the tenant is entitled to the return of his security deposit. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is also entitled to a monetary order amounting to double the value of his security deposit with interest calculated on the original amount only. No interest is payable.

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

As the landlord has not been successful in her application, I find that she is not entitled to recover the \$50.00 filing fee for this application.

Conclusion

I dismiss the landlord's application for monetary compensation for loss as a result of this tenancy. I dismiss the landlord's application to retain all or a portion of the tenant's security deposit. I dismiss the landlord's application to recover the filing fee for her application.

I grant the tenant's application for return of his security deposit and order the landlord to pay a monetary order amounting to double the value of the tenant's security deposit based on her

failure to comply with section 38 of the *Act* and his application for recovery of his filing fee for this application. The monetary award payable by the landlord to the tenant is as follows;

Item	Amount
Return of Security Deposit	\$400.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	400.00
Filing Fee	50.00
TOTAL MONETARY AWARD	\$850.00

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: April 29, 2015

Residential Tenancy Branch

