



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, MNDC, FF

Introduction

This hearing convened as a result of an application by the Tenant for a Monetary Order for return of double the security deposit, compensation pursuant to section 51 of the *Residential Tenancy Act* and recovery of the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

1. Is the Tenant entitled to a Monetary Order for return of double the security deposit?
2. Is the Tenant entitled to compensation pursuant to section 51 of the *Residential Tenancy Act*?
3. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that the tenancy began on October 1, 2014. Monthly rent was \$800.00 and the Tenant paid a security deposit of \$400.00 on October 1, 2014. The Tenant vacated the premises on August 31, 2015.

The Tenant testified that she provided the Landlord with a written notice of the forwarding address to return the security deposit to in September 2015. She stated that she provided her work address to the Landlord. The Tenant testified that she waited a month and when she hadn't received her security deposit, she went to the rental property and put a further note in the Landlord's mailbox.

The Tenant testified that the primary means of communication was texting, but in July or August the Landlord advised the Tenant to discontinue text communication.

The Landlord issued a 2 Month Notice to End Tenancy on June 30, 2015 (the "Notice"). A copy of the Notice was introduced in evidence. The Tenant testified that she paid rent for July and August 2015. The Tenant further testified that the Landlord failed to provide her with her free month's rent pursuant to section 51 of the *Residential Tenancy Act*.

The Tenant testified that while she was still in occupation, she spoke to the Landlord about the one month's compensation owing to her because of the 2 Month Notice as well as return of her security deposit. She stated that she asked for these amounts to be paid on the date she moved out and the Landlord stated that she would mail them.

The testimony of the Tenant was that the Landlord performed a move in condition inspection report, but did not perform an outgoing condition inspection report.

The Tenant confirmed that she did not sign over any portion of the security deposit to the Landlord.

The Landlord testified that she did not provide the Tenant with a free month's rent as required by section 51 as she did not have any contact with the Tenant after she moved out. She confirmed she had the Tenant's phone number and stated that she did not contact the Tenant as she believed it was the Tenant's responsibility to provide her forwarding address.

The Landlord stated that she did not pay the Tenant her security deposit because, again, she did not know the Tenant's forwarding address. She also stated that the Tenant failed to attend the move out inspection. The Landlord testified that on September 1, 2015, the Tenant phoned the Landlord and asked to set up a time to do the move out inspection on Thursday, September 3, 2015. She stated that the Tenant failed to attend on September 3, 2015. The Landlord confirmed that she did not offer the Tenant another opportunity to complete the move-out inspection, and that she did not make any further contact with the Tenant.

The Landlord also testified that the Tenant gave verbal notice to end the tenancy prior to the date she issued the 2 Month Notice and that, in hindsight, she wished that she never issued the 2 Month Notice as she believed the Tenant was moving out in any case.

The Landlord also stated that it was not true that the Tenant gave her a note with her forwarding address in her mailbox. The Landlord also denied knowing where the Tenant works.

In reply the Tenant stated that the Landlord knew where the Tenant worked and was aware that she worked for the local police department. The Tenant stated that she regularly talked to the Landlord about her work and it is simply not true that the Landlord was unaware of her work

address. The Tenant confirmed that there was a time during the tenancy they were on friendly terms.

Analysis

The Tenant seeks recovery of double the security deposit paid based on section 38 of the *Residential Tenancy Act* which provides as follows:

Return of security deposit and pet damage deposit

- 38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
- (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
- (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
- (a) the director has previously ordered the tenant to pay to the landlord, and
 - (b) at the end of the tenancy remains unpaid.
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
- (a) 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, or
 - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.
- (6) If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit, plus interest.

The Landlord confirmed that she did not provide the Tenant with a second opportunity to conduct the condition inspection report as required by the *Residential Tenancy Act* and the Regulations. By failing to perform the outgoing condition inspection report the Landlord has extinguished her right to claim against the security deposit, pursuant to section 36(2) of the *Act*. Accordingly, she had not authority to retain the security deposit.

I prefer the Tenant's evidence over that of the Landlord's with respect to whether the Tenant provided the Landlord with her forwarding address in writing. I also accept the Tenant's evidence that the parties' primary means of communication was texting. I find it likely that the Landlord failed to make further contact with the Tenant after the end of the tenancy as she was aware the Tenant was entitled to compensation pursuant to section 51.

There was no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant or an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant, they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant *double* the amount of the security deposit. Accordingly, I award the Tenant \$800.00 representing double the \$400.00 security deposit paid.

I also award the Tenant the sum of \$800.00 representing her compensation pursuant to section 51 of the *Residential Tenancy Act*.

Section 51 reads as follows:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The Landlord issued the Notice and was obligated, pursuant to section 51 to provide the Tenant with a free month's rent, or pay her the equivalent of one month's rent. This sum was to be provided to the Tenant *on or before* the effective date of the Notice.

In total I award the Tenant the sum of **\$1,650.00** for the following:

Double the \$400.00 security deposit paid pursuant to section 38 of the <i>Act</i>	\$800.00
1 month's rent pursuant to section 51 of the <i>Act</i>	\$800.00
Recovery of the filing fee pursuant to section 72 of the <i>Act</i>	\$50.00
TOTAL AWARDED	\$1,650.00

The Tenant is given a formal 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, 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: May 24, 2016

Residential Tenancy Branch