



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDC, MNSD, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62;
- a monetary order for compensation for damage or loss under the *Act*, *Regulation*, or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the remainder of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 30 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she served the landlord with the tenant's application for dispute resolution hearing package on April 25, 2017, by way of posting to the landlord's residence door. The tenant claimed that she used the address provided to her by the landlord during the tenancy. As advised to the tenant during the hearing, I find that the tenant did not properly serve the landlord with her application according to section 89 of the *Act*, as posting to the door is not permitted. In any event, the tenant confirmed that she no longer required the relief in her first application, which was cancelling the 1 Month Notice and an order for the landlord to comply, because the tenant had already vacated the rental unit. Therefore, this part of the tenant's application is dismissed without leave to reapply.

The tenant confirmed that the landlord was served with the amendment to the tenant's application for dispute resolution, as well as all of her written evidence on April 27, 2017, by way of registered mail. She said that she provided it to the same address as noted above for the landlord. The tenant provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with

the tenant's amendment and written evidence on May 2, 2017, five days after its registered mailing. The Canada Post website tracking report indicates that the landlord received and signed for the package on May 1, 2017. Accordingly, I notified the tenant that I could consider her written evidence and her amendment asking for the partial return of her security deposit, moving expenses and the filing fee, because these claims were all included in her amendment.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to include both possible first names for the landlord. The tenant indicated two names for the landlord in her application. I find no prejudice to the landlord in amending the tenant's application, as the landlord's correct name is required in order to ensure that this decision and resulting monetary order are enforceable against the landlord.

Issues to be Decided

Is the tenant entitled to a return of the remainder of her security deposit?

Is the tenant entitled to a monetary award for moving expenses?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenant testified regarding the following facts. This tenancy began on February 15, 2016 and ended on April 30, 2017. Monthly rent in the amount of \$1,200.00 was payable on the first day of each month. A security deposit of \$600.00 and a pet damage deposit of \$300.00 were paid by the tenant (collectively "deposits"). The tenant provided a bank statement indicating that she paid the above amounts to the landlord. The landlord returned the full pet damage deposit of \$300.00 to the tenant. The landlord returned \$400.00 from the security deposit to the tenant and retained \$200.00. Both parties signed a written tenancy agreement but a copy was not provided for this hearing.

The tenant said that the landlord did not complete move-in or move-out condition inspection reports for this tenancy. She testified that she did not provide a written forwarding address to the landlord when she vacated. She stated that she did not provide written permission to the landlord to keep any amount from her deposits. She said that she did not receive an application for dispute resolution from the landlord to keep any part of the deposits. The tenant seeks a return of the remainder of her security deposit of \$200.00 from the landlord.

The tenant also seeks moving expenses of \$1,631.10 and to recover the \$100.00 filing fee paid for this application. The tenant claimed that she moved out because the landlord served her with a 1 Month Notice. The tenant said that the landlord gave her illegal eviction notices and letters before the one month notice. She said that she was not aware that she could dispute the 1 Month Notice until the landlord notified her and she did not know that she could wait for this

hearing date before moving out. She said that the landlord failed to serve her with a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), which she should have because the landlord was selling her property, which entitles the tenant to one month free rent. She said that because she did not receive this one month free, she should be entitled to her moving expenses because she had to move in a short period of time. The tenant provided two emailed statements for \$821.10 and \$810.00, which she said her mother paid on her behalf for moving expenses.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

I find that the tenant voluntarily vacated the rental unit after receiving a 1 Month Notice from the landlord. The tenant filed an application to dispute the notice but decided not to wait for this hearing in order to determine the outcome of her tenancy. She chose to move on her own accord, at the time that she did. Therefore, if the tenant incurred moving costs, which she likely would in any event when moving to a new place, she must bear these costs. The tenant also failed to provide a specific breakdown of the costs charged, the rate per hour, the name of the tenant or the address where the move was completed. I dismiss the tenant's application for moving costs in the amount of \$1,631.10, without leave to reapply.

Section 38 of the *Act* requires the landlord to either return the tenant's deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings, on a balance of probabilities, based on the undisputed testimony of the tenant. The tenancy ended on April 30, 2017. The tenant did not give the landlord written permission to keep any part of her deposits. The landlord did not return the full security deposit or file an application to retain it. However, the tenant did not provide her written forwarding address to the landlord and the doubling provision of section 38 of the *Act* has not yet been triggered. I find that the tenant is not entitled to the return of double the value of her deposits.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenant's deposits. In accordance with section 38(6)(b) of the *Act*, I find that the tenant is entitled to a return of the remainder of her security deposit in the amount of \$200.00 from the landlord.

As the tenant was mainly unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$200.00 against the landlord. The landlord must be served with 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.

The remainder of the tenant's application is dismissed 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: May 29, 2017

Residential Tenancy Branch