



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for the return of all or a portion of her security deposit pursuant to section 38.

Both parties attended this hearing and were given an opportunity to present evidence, give sworn testimony and make submissions. The tenant attended on behalf of her co-tenant. The tenant acknowledged the landlord's documentary evidence submitted in response to this application. The landlord confirmed receipt of the tenant's Application for Dispute Resolution and evidence package.

Preliminary Issue: Amending Application

At this hearing, the tenant sought to amend her application to recover the \$100.00 filing fee pursuant to section 72 of the Act as well as \$418.85 in security deposit. She testified that she made reference to the filing fee in her monetary worksheet. However, the original amount she sought in her application was \$418.85 reflecting only the amount of security deposit to be returned. Policy Guideline No. 23 provides that an amendment application must be made prior to the dispute resolution hearing date. The guideline states in part,

An application must contain sufficient details about the dispute Where an applicant requests an amendment of the application to give further and/or better details, the arbitrator may allow the amendment, or may refuse it. In general, a request to amend an Application for Dispute Resolution should not be granted when the amendment results in prejudice to a party.

(emphasis added)

The tenant did not seek to amend her application prior to this hearing so that the respondent would know the details of the case against her. Therefore, I find that the tenant is not entitled to amend her application to seek the filing fee from the landlord.

Issue(s) to be Decided

Is the tenant entitled to recover her security deposit from the landlord?

Background and Evidence

This tenancy began in July 2016 and continued until October 2, 2016 when the tenants vacated the rental unit. The tenant testified that the tenants provided their forwarding address on September 30, 2016 when they provided notice in writing to the landlord to vacate the rental unit. The landlord continues to hold a \$600.00 security deposit paid by the tenants at the outset of the tenancy. The landlord confirmed that she has not made an application to retain the tenants' security deposit: she testified that she did not know she was required to do so until after the tenants filed an application for dispute resolution. She testified she believed that she could seek a monetary amount or receive authorization to retain the tenants' security deposit by attending this hearing.

The landlord testified, supported by her photographic evidence that the tenant left some chips in the wall that required repair. After the end of the tenancy, the landlord communicated to the tenant that the repairs to the wall cost \$181.15. The tenant communicated to the landlord that she may retain this amount. The parties agreed that the rest of the tenants' security deposit should be returned. The tenant provided undisputed testimony that, as of the date of this hearing, the landlord has not returned the tenants' security deposit (\$418.85: the portion agreed upon by all parties).

Analysis

In this circumstance, while the parties were not able to reach an agreement between them, both parties were candid in the previous agreements they had reached. The tenant candidly agreed that she and her co-tenant damaged the walls in the rental unit and that they had agreed to reimburse the landlord for the cost of repairs. She testified that she had agreed to the \$181.15 amount. The landlord was also candid in explaining that, since she had not been a landlord before, she took some missteps in addressing the tenants' security deposit.

As discussed at this hearing, 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 tenants' 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 tenants' 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 tenants' provision of the forwarding address. In this case, the landlord was informed of the forwarding address in writing on September 30, 2016. Both parties agreed that the address was provided at an earlier date, as well. Both parties agreed that the tenants vacated the rental unit on or before October 2, 2016. The tenants however paid rent until the end of October 2016. The landlord had 15 days after October 31, 2016 (as the latest possible date) to take one of the actions outlined above.

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." The tenant testified that she agreed to allow the landlord to retain \$181.15 of the security deposit. Based on the testimony of both parties, section 38(4)(a) of the Act applies to the tenants' security deposit. The tenants agreed that damage was caused and that the landlord deserved compensation and therefore, I will allow the landlord to retain \$181.15.

The tenants sought the return of the security deposit. The landlord did not apply to the RTB to retain the tenants' deposit. Given that the landlord confirmed that she did not make an application, I find that the tenants are entitled to a monetary order including \$418.85 - the remainder of the security deposit after wall chip repairs.

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.*

Based on the evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants' security within the required 15 days. The tenant gave sworn undisputed testimony that neither she nor her co-tenant waived her right to 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*. In these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to a **total monetary order amounting to double their security deposit amount remaining (\$418.85 x 2 = \$837.30)** with any interest. No interest is payable for this period.

I have found that the tenants had not applied to recover the \$100.00 filing fee paid for this application and therefore they are not entitled to recover the filing fee.

Conclusion

I issue a monetary Order in favour of the tenant as follows:

Item	Amount
Return of Security Deposit	\$418.85
Monetary Award for Landlords' Failure to Comply with s. 38	418.85
Total Monetary Order	\$837.70

The tenant is provided with this Order in the above terms and 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.

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 05, 2017

Residential Tenancy Branch