



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Introduction

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord acknowledged receipt of the evidentiary materials submitted by the tenant. The landlord indicated that he did not receive a copy of the monetary order worksheet.

Given that this application indicates, in the body of page 2 of the application form that the application relates to the return of a security deposit and given that the tenant wrote the amount that she sought, I find that the tenant clearly expressed, numerically and in text the amount that she sought and why. The landlord explained that he was slightly confused about the amounts but that he understood the tenant was seeking \$840.00. I find that this confusion did not affect the landlord's ability to understand the nature and (details) of the application or his ability to respond fully to the application at this hearing. Therefore, I heard evidence from both parties with respect to the details of this application.

Issue(s) to be Decided

Is the tenant entitled to the recovery of her security deposit?

Is the tenant entitled to the recovery of an amount equivalent to her security deposit for the landlord's failure to return the deposit in accordance with the Act?

Background and Evidence

This tenancy began on June 29, 2013 and continued until the tenant vacated the rental unit on April 1, 2017. The tenant provided undisputed testimony that she provided one month's notice to end tenancy and that, after vacating the rental unit, a condition inspection was conducted in both party's presence on April 2, 2017. The tenant provided undisputed testimony that, on April 2, 2017, the tenant provided the landlord with her forwarding address.

The landlord testified that he did not make any applications to retain the tenant's security deposit at the Residential Tenancy Branch. A copy of the condition inspection report was submitted as evidence for this hearing. The report, signed by both parties, indicates that; the tenant returned only one of two keys for the rental unit; that there was some minor damage to the unit including a broken toilet seat and missing light bulbs. Without any monetary amounts indicated, the tenant agreed to the representation of the condition rental unit on the report.

In an email exchange on April 8, 2017, the landlord wrote to the tenant indicating that he would deduct \$5.00 to replace a switch-plate in the rental unit as well as \$120.85 from the security deposit to pay the remaining utility unit. The landlord wrote that he would return \$454.15 of her original \$575.00 security deposit to the tenant. In an email dated April 8, 2017, the landlord also wrote, "please let me know when you can drop off the key".

The landlord testified that some correspondence between the two parties took place by text. However, those messages were not provided as evidence for this hearing. Further email correspondence sent by the landlord to the tenant on April 16, 2017 read,

As I would like to get the damage deposit balance back to you I am going to send you an interact transfer to this email address. Password is "return".

As [we] haven't gotten the key back from you I am going to take \$100.00 off for the cost to re-key the lock. If you find the key please let me know and I can send you the \$100.00.

The landlord returned \$309.98 to the tenant on April 17, 2017.

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 deposits, 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 was informed of the forwarding address on April 2, 2017 (the day of the condition inspection). In this particular case, only one of two keys to the rental unit was returned to the landlord. The landlord allowed the tenant an opportunity to return the key to the unit. Ultimately, she did not return the key to the unit.

I find that, by April 16, 2017, according to the email correspondence between the parties, the landlord determined that the locks would be changed and that the tenant would bear the cost of the re-keying. While I appreciate that the landlord wrote in an email that he would refund the \$100.00 if the tenant found the key to the rental unit, I must be guided by the letter and the spirit of the *Act* in making a determination on the return of the deposit. According to the *Act* and based on all of the evidence before me, I find that the tenancy ended on April 16, 2017 when the landlord changed the locks, if not on April 2, 2017 when the forwarding address was provided and the rental unit was vacated.

Based on the determination that the tenancy ended on or before April 16, 2017 the landlord had 15 days after April 16, 2017 to take one of the actions outlined in the paragraph above (apply to retain the deposit or return it). The landlord did not make an application to the Residential Tenancy Branch with respect to retaining a further portion of the tenant's security 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." I accept the tenant's testimony

that she did not agree to allow the landlord to retain the additional \$100.00 for the rekeying of the lock. I accept the tenant's testimony that she agreed to the landlord's retention of \$125.85 *only* from her security deposit. As there is no evidence that the tenant has given the landlord written authorization at the end of this tenancy to retain an additional \$100.00 from her deposit, I find that section 38(4)(a) of the *Act* applies to only \$125.85 but does not apply to the tenant's security deposit.

The tenant sought the return of the additional \$100.00 deducted from security deposit by the landlord. The landlord had the tenant's consent and agreement to retain \$125.85 but not the additional \$100.00. The landlord also did not apply to the Residential Tenancy Branch to retain the additional \$100.00 from the tenant's deposit. I find that the tenant is entitled to a monetary order including \$100.00 for the return of the remainder her security deposit held by the landlord.

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 amount of the tenant's security deposit he had agreed to return within the required 15 days to take either action. The tenant provided undisputed testimony that she has not waived her right 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*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a total monetary order amounting to

double the value of her security deposits with any interest calculated on the original amount only. No interest is payable for this period.

Conclusion

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

Item	Amount
Return of Security Deposit Remainder less amount held by agreement (\$575.00 - \$125.85 = 449.15)	\$449.15
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	449.15
Total Monetary Order	\$898.30

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: September 19, 2017

Residential Tenancy Branch