



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, OLC

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 the security deposit pursuant to section 38;
- a monetary award for damages and loss pursuant to section 67; and
- an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I confirmed service. The landlord confirmed receipt of the tenant's application for dispute resolution and Amendment to the application. Both parties testified that they had not submitted any evidence. I find that the landlord was served with the tenant's application and amendment in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed on the following facts. This tenancy began in June 1, 2014 and ended on June 30, 2017. A security deposit of \$375.00 and pet damage deposit of \$500.00 was paid by the tenant at the start of the tenancy. The parties participated in a

move-in and move-out condition inspection and a report was prepared at both. The tenant provided the landlord with a forwarding address on July 1, 2017. The tenant did not give the landlord written authorization to retain any portion of either the security deposit or pet damage deposit.

The landlord testified that the rent at the end of the tenancy was \$750.00 with an additional \$50.00 for utilities. The tenant testified that the rent was \$800.00 with the \$50.00 utility charge in addition to that amount.

The parties made reference to a written tenancy agreement but one was not submitted into evidence by either party. The landlord testified that there is another named landlord on the tenancy agreement who was not named in the tenant's application.

The parties suggested that the tenancy ended by way of a 2 Month Notice to End Tenancy for Landlord's Use but neither party submitted a copy of any Notice to End Tenancy into written evidence.

The landlord testified that the tenant failed to pay rent for the month of June, 2017 and therefore he retained the security deposit and pet damage deposit. The landlord further testified that he estimates there is nearly \$10,000.00 worth of damages to the rental unit. The landlord said that "he has not gotten around to filing a claim" for the damages. He said that "he didn't expect the tenant would go through with her claim".

The tenant testified that she paid the June, 2017 rent in full but was not provided with a receipt for her payment by the landlord. The tenant submits that as she was issued a 2 Month Notice she is entitled to receive the equivalent of one month's rent. The tenant said that she originally was going to withhold the rent for July, 2017 but as she moved out on June 30, 2017 is seeking the equivalent of one month's rent from the landlord.

Analysis

The landlord stated that there is another co-landlord listed on the written tenancy agreement and the present application solely naming him is therefore invalid. I find the landlord's argument to have no basis. Rule of Procedure 2.7 allows that an applicant may name more than one respondent in their application, but does not create an obligation to do so. The landlord testified that he is one of the landlords on the written tenancy agreement. I am satisfied that the named landlord is the appropriate party to be a respondent to the tenant's claim.

Pursuant to Rule of Procedure 6.6 the onus to prove their case on a balance of probabilities lies with the person making the claim, in this case the tenant. Rule 2.5 provides that the applicant must submit all documentary evidence to be relied on at the hearing.

Neither party submitted documentary evidence for this hearing but continuously made reference to documents and evidence that neither had submitted to the Residential Tenancy Branch.

Section 51 of the *Act* provides that 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 an amount that is the equivalent of one month's rent.

While the parties referred to a 2 Month Notice, I find that the absence of any Notice in the written evidence prevents me from making a definitive conclusion as to the extent to which the landlord's 2 Month Notice complied with section 52 of the *Act*.

Consequently, I make no finding on the tenant's entitlement to compensation under section 51 of the *Act* as I find that the tenant has not met the burden of proof in establishing entitlement to any such Order. This portion of the tenant's application is dismissed with leave to reapply.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit and pet damage deposit in full or file for dispute resolution for authorization to retain the deposits 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must 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 permission to keep all or a portion of the security deposit or pet damage deposit as per section 38(4)(a).

The parties gave undisputed testimony that the tenant provided the landlord with a forwarding address in writing on July 1, 2017. The parties agreed that the tenant had not given written permission to keep any portion of the security deposit or pet damage deposit. The landlord testified that he has not filed an application to retain the deposits nor has he returned any portion of them.

I accept the undisputed evidence that the tenant provided written notice of the forwarding address on July 1, 2017. I accept the evidence of the parties that the

landlord failed to return the full security deposit and pet damage deposit to the tenant within 15 days of July 1, 2017, the time frame granted under section 38 (1)(c) of the *Act* nor did the landlord make an application claiming against the security deposit during that period.

If the landlord had concerns arising from unpaid rent or damages to the rental unit as the landlord said, they could have addressed those matters within 15 days of the end of the tenancy or receiving the tenant's forwarding address. Even if there was a legitimate arrear, which there is no documentary evidence to support, the landlord must receive written authorization from the tenant pursuant to the *Act* to apply the security deposit. The landlord cannot decide to simply keep the deposits as recourse for their loss without following the legislative steps.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit and pet damage deposit in full within the required 15 days. I accept the parties' evidence that the tenant has not waived their right to obtain a payment pursuant to section 38 of the *Act* 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 tenants are entitled to an \$1,750.00 Monetary Order, double the value of the security deposit and pet damage deposit paid for this tenancy. No interest is payable over this period.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,750.00 against the landlord. The tenant is provided with a Monetary Order 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: January 15, 2018

Residential Tenancy Branch