



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDCT FFT

Introduction

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

- the return of the security deposit pursuant to section 38 of the *Act*;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

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 present, service of documents was confirmed. The tenant testified that the landlord was served with the Notice of Dispute Resolution by Canada Post registered mail in early May 2018, which was confirmed received by the landlord. The landlord confirmed receiving the tenant's evidence in a separate package in mid-October 2018. The landlord testified that the tenant was served with the landlord's evidence on by Canada Post registered mail on October 7, 2018, which was confirmed received by the tenant. Based on the undisputed testimonies of the parties, I find that the landlord was served with the notice of this hearing in accordance with section 89 of the *Act*, and the evidence of both parties was served in accordance with section 88 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit? If so, is the tenant entitled to a monetary award equivalent to the value of the security deposit because of the landlord's failure to comply with section 38 of the *Act*?

Is the tenant entitled to monetary for the landlord's failure to comply with the *Act*, regulations or tenancy agreement?

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The parties confirmed that there was no written tenancy agreement. The parties confirmed the following information pertaining to the verbal tenancy agreement:

- This month-to-month tenancy began on October 31, 2017.
- Monthly rent of \$1,050.00 was payable on the last day of the month.
- The tenant paid a security deposit of \$550.00 at the beginning of the tenancy, which the landlord continues to hold.
- A written inspection report was never prepared or provided to the tenant at move-in.
- The tenant gave notice to end the tenancy on February 28, 2018 and the tenancy ended on March 31, 2018.
- The tenant did not participate in a move-out condition inspection with the landlord.
- The tenant provided his forwarding address in writing and via text message to the landlord on April 2, 2018.
- The tenant did not provide written authorization to the landlord for any deductions from the security deposit.
- The landlord did not file an application for dispute resolution to retain the security deposit.

The tenant is seeking the return of his security deposit and monetary compensation equivalent to the amount of the security deposit. The tenant is also seeking \$127.80 for the cost of mail forwarding. The tenant stated that he felt this expense was necessary to ensure that none of his mail was sent to the landlord's address after he moved out.

The landlord testified that the tenant was responsible for damages and cleaning deficiencies, however the landlord acknowledged that an application for dispute resolution to retain the security deposit at the end of the tenancy had not been filed due to dealing with a death in the family.

I explained to the parties that the only matter before me for decision at this hearing was to make a determination on the tenants' application for the return of the security deposit, and that any testimony in relation to the alleged damages and cleaning deficiencies was not relevant for making a determination in this matter. I informed both parties that they were both at liberty to make claims for damages in relation to the tenancy in accordance with the time limits provided by the *Act*.

I further explained that the *Act* contains statutory provisions which can require that in certain circumstances a landlord must repay a tenant double the security deposit. If a tenant is entitled to doubling of the deposit, I must award the tenant double the deposit unless the tenant expressly waives entitlement. Accordingly, I have considered whether the tenant is entitled to the doubling provision in making this decision.

Analysis

1) Mail Forwarding Cost

Section 67 of the *Act* provides that an arbitrator may determine the amount of the damage or loss and order compensation to the claimant, **if an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement.**

In this matter, the tenant is seeking compensation for the cost of mail forwarding. Given that mail forwarding is an optional service which the tenant chose to pay for, and that it was the tenant who gave notice to end the tenancy, I do not find that the tenant incurred this cost as a result of the landlord's failure to comply with the *Act*, regulations or tenancy agreement.

Therefore, based on the testimony and evidence presented, on a balance of probabilities, I find that the tenant is not entitled to compensation for this item and as such the tenant's claim for mail forwarding costs is dismissed without leave to reapply.

2) *Security Deposit*

The *Act* contains comprehensive provisions on dealing with security deposits. Under section 38 of the *Act*, the landlord is required to handle the security deposit as follows:

- 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.

...

- (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.

...

- (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.

At no time does the landlord have the ability to simply keep all or a portion of the security deposit because they feel they are entitled to it due to damages caused by the tenant. If the landlord and the tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

In this matter, the tenancy ended on March 31, 2018, and the parties agreed that the landlord was in receipt of the tenant's forwarding address as of April 2, 2018.

Therefore, the landlord had 15 days from April 2, 2018, which is the later date, to address the security deposit in accordance with the *Act*.

The landlord confirmed that no application for arbitration had been filed within 15 days of the receipt of the tenant's forwarding address, to retain all or a portion of the security deposit, as required under section 38 of the *Act*.

It was confirmed by both parties that the tenant did not provide the landlord with any authorization, in writing, for the landlord to retain any portion of the security deposit.

I further note that the landlord extinguished the right to claim against the security deposit by failing to provide a written condition inspection report at the beginning of the tenancy. This extinguishment is explained in section 24(2) as follows:

- 24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 23 (3) [*2 opportunities for inspection*]
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Because the landlord extinguished the right to the security deposit at the beginning of the tenancy, it is a moot point that the tenant did not participate in a move-out condition inspection of the rental unit at the end of the tenancy.

The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an Arbitrator, or with the written agreement of the tenant. In this matter, I find that the landlord did not have any authority under the *Act* to keep any portion of the security deposit.

I note that the landlord provided verbal testimony and documentary evidence about the issue of damages and cleaning deficiencies left by the tenant; however, the landlord is unable to make a monetary claim through the tenant's Application.

The landlord may still file his own Application for compensation for the alleged damages and cleaning deficiencies caused by the tenant; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

Based on the above legislative provisions and the testimony and evidence of both parties, on a balance of probabilities, I find that the landlord failed to address the security deposit in compliance with the *Act*. As such, in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a monetary award equivalent to the value of double the amount of the security deposit withheld by the landlord, with any interest calculated on the original amount only. No interest is payable for this period.

Therefore, the tenant is entitled to a monetary award of \$1,100.00 as compensation for the landlord's failure to address the security deposit in accordance with section 38 of the *Act*.

Having been mostly successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

In summary, I order that the landlord pay the tenant the sum of **\$1,200.00** in full satisfaction of the security deposit and recovery of the filing fee paid by the tenant for this application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,200.00 pursuant to sections 38, 67 and 72 of the *Act*.

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: October 31, 2018

Residential Tenancy Branch