



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, RPP, FFT

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting a return of double his security deposit. The Tenant also requests an order requiring the Landlord to return his personal property, as access to the rental unit was denied by the Landlord. The Tenant requests an order for payment of the filing fee.

The Tenant appeared for the scheduled hearing; the Landlord and his attorney called into the hearing twenty minutes past the scheduled time, due to issues locating the teleconference call-in code provided by the Residential Tenancy Branch. Neither party raised a concern about the service of the Notice of Hearing or evidence that was submitted by the Tenant, both of which were served by registered mail on the Landlord. However, the Tenant testified that he received the Landlord’s evidence package by Express Post (without requiring a signature), and that it was only received on the day of the hearing.

The Landlord was served with the Notice of Hearing by registered mail and delivery confirmed as of February 7, 2018; the Rules of Procedure 3.15 states that the Respondent (Landlord) must deliver and serve evidence on the Applicant not less than seven days before the hearing. I find that the Tenant has not had a fair opportunity to review and respond to the evidence package, which was not delivered in accordance with this rule or per section 88 of the Act. Accordingly, I am not considering the evidence package of the Landlord. All testimony of the Landlord given during the hearing was considered in this decision, along with the evidence filed by the Tenant; however, only that which is relevant to the issues is considered and discussed in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

Issues to be Decided

Is the Tenant entitled to a monetary order for his security deposit, pursuant to sections 67 and 38 of the Residential Tenancy Act ("Act")? Is the Tenant entitled to a doubling of the security deposit?

Is the Tenant entitled to an Order for the return of his personal property from the Landlord, pursuant to section 65 of the Act?

Is the Tenant entitled to payment of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

This tenancy began January 1, 2006 and ended on January 2, 2018, by way of a settlement agreement following a hearing held on December 27, 2017. The rent was \$754.00 a month, payable on the first of each month; there was no written tenancy agreement between the parties. The Tenant filed a receipt for the payment of the security deposit in the sum of \$350.00, dated January 22, 2006.

The Tenant made mention of a previous hearing between the parties. In the previous decision, the following settlement was made: *"Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:*

1. *Both parties agreed that this tenancy will end by 5:00 p.m. on January 2, 2018, by which time the tenant and any other occupants will have vacated the rental unit;*
 - a. *Both parties agreed that this tenancy is ending pursuant to the landlords' 2 Month Notice, dated September 30, 2017;*
2. *The landlords agreed that the tenant is entitled to one month's free rent compensation pursuant to section 51 of the Act and the landlords' 2 Month Notice on the following term:*
 - a. *the landlord will refund the tenant's December 2017 rent by providing a cheque for \$754.00 to the tenant by 5:00 p.m. on January 2, 2018;*

3. *The landlords agreed that their 10 Day Notice, dated November 20, 2017 and 1 Month Notice, dated September 30, 2017, are cancelled and of no force or effect.*
4. *The landlords agreed to pay the tenant \$100.00 by 5:00 p.m. on January 2, 2018, which the tenant agreed to accept in full satisfaction of the removal of the horse pen services at the rental unit;*
5. *The landlords agreed to permit the tenant to leave the fence posts at the rental property upon vacating the rental unit;*
6. *Both parties agreed to meet to perform a move-out condition inspection at 5:00 p.m. on January 2, 2018;*
7. *Both parties agreed that the tenant's security deposit of \$300.00 will be dealt with at the end of this tenancy in accordance with section 38 of the Act;*
8. *Both parties agreed to bear their own costs for the \$100.00 filing fees paid for their applications;*
9. *Both parties agreed that this settlement agreement constitutes a final and binding resolution of both parties' applications made at this hearing."*

The Tenant states that his agent, who attended a move-out inspection on January 2, 2018, provided a written notice of his forwarding address. The Tenant followed up with an email to the Landlord requesting the return of his security deposit and access to retrieve his remaining items on January 3, 2018; the email was submitted into evidence and the Landlord confirmed his current email address during the hearing. The Tenant states that he received no direct reply, but confirms that the Landlord's evidence package delivered today shows his correct forwarding address being used.

Both parties confirm that the Landlord did not file a dispute application within 15 days of the date of receiving the forwarding address of the Tenant and the end of the tenancy; the Landlord's attorney explained that his client may not have been aware of the requirement. The Tenant provided evidence that he did not consent to the Landlord retaining his security deposit and that he demanded payment of it. The Landlord states that there was damage to the rental unit and he was entitled to retain the security deposit. The Tenant has not received the security deposit and asks that the security deposit and accrued interest be returned; he further argued that he is entitled to double the security deposit under the law.

The Tenant explained that on the day the tenancy ended, there had been a significant snowfall that made the drive up to the rental unit impossible. He provided multiple photographs and email communications with the Landlord from that day to confirm the

issue with gaining access. Police were called in and the Tenant states they were also unable to access the rental unit due to the heavy snowfall on the driveway.

He states that the Landlord eventually cleared a 5.5 foot wide path which allowed his roommate's car to go up the road; the Tenant's van got stuck on the path at one point and there was no ability for a larger vehicle to make it up the driveway to the rental unit. The Tenant states that he was only able to retrieve some of his belongings in his van, and all larger items were left behind that day. He later attempted to retrieve his things when the driveway was accessible, but the Landlord called police and had him removed from the property; he was instructed to seek a legal remedy to retrieve his belongings.

The Tenant states that he left behind a washer and dryer, a large screen television, an air conditioning unit, a desk, an inflatable boat, wheelbarrow and other miscellaneous items. Photographs were submitted into evidence, along with the email where the Tenant stated that he required access to retrieve the rest of his belongings, which he did not abandon.

The Landlord's response was that there was nothing but garbage left behind, which was disposed of. The Landlord claims that the washer and dryer belong to him, which the Tenant disputes.

The Tenant also claims a Buick LaSabre he owns was also on the property. The Landlord argued that this vehicle belongs to a resident on the property and that the Tenant sold the car to this third party, which the Tenant denies. The Tenant states that he is the legal owner and he has not sold the vehicle to anyone.

The Tenant requests an order for the return of his personal property and for payment of his filing fee in this matter.

Analysis

Section 65 of the Act states in part:

65 (1) *Without limiting the general authority in section 62 (3), if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:...*
(e) *that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned.*

The Landlord is only entitled to consider personal property “abandoned” if he receives a notice that the Tenant does not intend to return, or the circumstances are such that the Tenant could not reasonably be expected to return to the rental unit. Based on the email communications and testimony provided, I find that the Tenant did not abandon the remaining property and that he made it clear to the Landlord the reasons he was unable to remove it on the day the tenancy ended - and that he fully intended to retrieve it. Under regulation 25 to the Residential Tenancy Act, the Landlord had an obligation to store the property in a safe location for at least 60 days and to keep an inventory of the property.

In this instance, the Landlord had notice of the Tenant’s claim for the return of his personal property as of February 7, 2018, only a month after the tenancy ended. As the Landlord is claiming that there is no property left to retrieve and that anything left behind has been disposed of, an order to return the personal property will not benefit the Tenant. I find that aside from the vehicle, there is no personal property left in the possession of the Landlord to be returned to the Tenant. Therefore, the Tenant is granted leave to apply for a monetary order for compensation for items that he claims were left at the rental unit and owned by him, but which was removed and disposed of without his consent by the Landlord.

As for the vehicle, the Landlord states that it is still at the rental unit. The Landlord is ordered to provide reasonable and unfettered access to allow the Tenant to retrieve that vehicle. If the vehicle belongs to a third party, then that will be a matter for those individuals to address. However, the Landlord is not entitled to block access which prevents this Tenant from retrieving the vehicle. The Tenant is to provide at least 48 hours notice in writing to the Landlord that he intends to be on site to obtain his vehicle.

The Tenant also requests a return of his security deposit, pursuant to section 38 of the Act which states, in part:

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(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.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

(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.

[bolding added]

There is no evidence before me to suggest that this Tenant consented to the Landlord retaining the security deposit. Furthermore, there was no application made by the Landlord to retain the security deposit within 15 days of the end of the tenancy and

delivery of the forwarding address. I am satisfied that the Landlord had written notice of the forwarding address based on the testimony of the Tenant and the fact that the Landlord used that address to deliver the evidence package; the Landlord also confirmed the same email address at the end of the hearing, which was used by the Tenant on January 3, 2018 to provide confirmation of the forwarding address.

Accordingly, the Tenant is entitled to double the amount of the \$350.00 security deposit pursuant to section 38(6) of the Act. The Landlord must pay the Tenant the sum of **\$700.00**. In addition, interest has accrued on the original security deposit amount in the sum of **\$12.28**, using a calculation as provided for in the Act and regulations.

As the Tenant was mainly successful in this application, I am also prepared to award the filing fee of **\$100.00**.

This monetary order must be served on the Landlord and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlord fails to make payment. Copies of this order are attached to the Tenant's copy of this Decision.

Conclusion

The Landlord shall pay forthwith to the Tenant the sum of **\$812.28** for payment of the security deposit and accrued interest.

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 25, 2018

Residential Tenancy Branch