



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ross House Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNSD

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting a return of double the security deposit and a monetary order for damages and other compensation. The Tenant filed a second application under #31011116 with the Residential Tenancy Branch on the same date, with effectively the same relief sought. This hearing addresses both Applications.

The Tenant and two representatives for the Landlord (“Landlord” hereinafter) appeared for the scheduled hearing. Neither party raised a concern about the service of the Notice of Hearing or evidence that was submitted by the parties.

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.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Is the Tenant entitled to a monetary order for compensation and/or other damages, pursuant to section 67 of the Act?

Is the Tenant entitled to a return of the security deposit pursuant to section 38 of the Residential Tenancy Act (“Act”)?

If so, is the Tenant entitled to a doubling of the security deposit pursuant to section 38?

Background and Evidence

The Tenant explained that this tenancy began in March of 2014 and ended March 1, 2016 under an order of the Residential Tenancy Branch. The monthly rent had been \$650.00 per month, payable on the first of each month. A security deposit of \$200.00 was paid by the Tenant.

The Tenant states that he provided his forwarding address to the Landlord by telephone and that she acknowledged receipt of same in a text message. It is the Landlord's evidence that she prepared a cheque for the security deposit and sent it to the forwarding address provided.

The Tenant later began contacting the Landlord as he never received the cheque. He attempted to arrange several meetings with the Landlord, who had to cancel each time. He submitted a copy of a text messages string dated April 10 which states:

"Tenant: Hello (landlord's name redacted), this is (tenant's name and address redacted). I did not receive my damage deposit in the mail.

Response: I mailed it to the address provided above.

Tenant: And did not receive any mail from you. Do you have proof it was sent or unlawfully cashed?"

The Tenant is claiming double the return of his security deposit back in the amount of \$400.00 and a further \$300.00 as compensation for the time and trouble he incurred trying to get the payment and meetings arranged with the Landlord. He describes the actions of the Landlord as malicious in nature and that he ought to be receiving compensation.

The Landlord states that she got busy and was unable to meet up with the Tenant, but that they inspected the rental unit and found it to be in need of repairs due to items being hung on the walls. They also claim a mattress they had purchased for the Tenant had been removed by him; the Tenant states it was his mattress. The Landlord prepared a letter in writing which she left with someone to pass along to the Tenant which states:

*"Copy of letter mailed Saturday February 18, 2017
(Tenant's name redacted) security deposit return \$200
Cost of stolen mattress to replace: \$250
Damage to floor and walls: \$400
Total cost of damages to Ross House: \$650 – 200 (security deposit) = \$400*

No return of security deposit.

*Regards,
(Landlord's signature)"*

The Landlord stated that there was no requirement to make an application and that they were entitled to retain the security deposit due to the damages and losses they noted. There was no evidence of a Condition Inspection Report having been completed at the start or the end of the tenancy. The Tenant vacated and left his keys as per an order of the Residential Tenancy Branch and no formal move-out inspection was done with both parties present.

Analysis

Under section 7 of the Act, a party who fails to comply with the Act, regulation, or tenancy agreement must compensate the other party for damage or loss that results. To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. that a damage or loss exists;
2. that the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. the value of the damage or loss; **and**
4. steps taken, if any, to mitigate the damage or loss

The Landlord had a duty under section 35 of the Act to schedule a move-out inspection with the Tenant and offer at least two opportunities for an inspection. Sections 17 through 20 of the regulations provide detailed instructions for landlords to follow in that respect. I find that the Landlord has failed to provide sufficient evidence that it complied with section 35. Had the Landlord complied, there may have been an understanding between the parties regarding any damages and the use of the security deposit.

I now turn my attention to the security deposit claim. The Act contains comprehensive provisions on dealing with a tenant's security deposit [bolding added]:

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.

There is an exception if the tenant agrees to have the landlord retain the security 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.

Section 38(1) of the Act states that, **within 15 days** after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or file an application to claim against it. Section 38(4) (a) of the Act also provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

There is a lack of evidence to prove that the Tenant provided a forwarding address in writing to the Landlord, only that he contacted her by telephone with a new address. Pursuant to section 39 of the Act, the right of a tenant to the return of the security deposit is extinguished if a tenant does not give a landlord a forwarding address in writing within one year after the tenancy ended. There is no evidence to prove that the Tenant ever provided the forwarding address in writing to the Landlord. As the Tenant did not file this Application until February 26, 2018, over a year had passed and I find that the Tenant's right to the security deposit is extinguished.

I have considered the claim of the Tenant to receive \$300.00 in compensation for his difficulties in attempting to meet up with the Landlord to retrieve his security deposit at the end of the tenancy. However, I find that the parties both admit that communications had broken down by that point and that the relationship was strained due to ongoing legal matters before the Residential Tenancy Branch that resulted in the end of the tenancy.

There is insufficient evidence before me that the Tenant has suffered damage or loss that warrants monetary compensation. He failed to provide a forwarding address in writing. He had the option of applying for relief through the Residential Tenancy Branch at any point 15 days after providing his forwarding address, but did not file a dispute until February 26, 2018; he waited until the two-year limitation period to file this Application was about to expire. This delay was unnecessary and likely prolonged any discomfort he was experiencing due to the difficulties

in the relationship between the parties. I find that the Tenant has failed to prove his losses and has failed to mitigate the damage he states he experienced.

Conclusion

The Tenant's Application is dismissed.

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 28, 2018

Residential Tenancy Branch