



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- The return of her security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, and an agent for the Landlord (the “Agent”), both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision will be mailed to them at the mailing addresses confirmed in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing the party in attendance on behalf of the Landlord stated that although they are a shareholder in the named company which owns the rental unit and that they act as an agent for the named company, it is the named company that should be listed as the Landlord in the Application and decision as that is who is named as the

Landlord in the tenancy agreement. Both parties agreed that the named company is the Landlord according to the tenancy agreement. As a result, and with the agreement of the parties, I amended the Application to correctly name the Landlord as listed in the tenancy agreement.

Preliminary Matter #2

Both parties denied receiving the evidence of the other party. Although the Tenant testified that she sent her evidence by registered mail, she could not provide the exact date or the tracking number and did not provide a copy of the registered mail receipt for my consideration. The Landlord testified that he sent his evidence to the Tenant by email but could not provide the exact date it was sent. The Tenant denied any knowledge of this evidence prior to the hearing and although she was able to locate it during the hearing at what she described as an “obscure” and rarely used email address, she stated that she was unaware of it until the Agent testified it had been sent.

The Rules of Procedure are clear that at the hearing, the parties must be prepared to satisfy the arbitrator that the documentary evidence they intend to rely on in the hearing was served as required by the *Act* and the Rules of Procedure on the other party. Sections 88 and 89 of the *Act* also provide specific rules for the service of evidence and I note that service by email is not acceptable under either section.

The ability to know the case against you and to provide evidence in your defence is fundamental to the dispute resolution process. As the parties denied receipt of each other’s documentary evidence and as neither party was able to satisfy me that their evidence was served in accordance with the *Act* and the Rules of Procedure, I therefore decline to accept either party’s documentary evidence for consideration in the hearing as I find that it would be a breach of both the Rules of Procedure and the principles of natural justice to do so.

As a result, I have rendered this decision based on the testimony provided by the parties in the hearing.

Issue(s) to be Decided

Is the Tenant entitled to the return of her security deposit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

In the hearing the parties agreed that the one year fixed-term tenancy commenced on August 1, 2017, and that a \$975.00 security deposit was paid by the Tenant. The parties agreed that on December 19, 2017, the Tenant gave written notice to end her fixed-term tenancy early, effective February 1, 2018. The parties agreed that as the Landlord was unable to find a new occupant for the rental unit until February 15, 2018, the tenancy continued until February 15, 2018. The parties also agreed that the Tenant provided her forwarding address in writing to the Landlord on February 13, 2018.

Although the parties agreed that the rental unit was new at the start of the tenancy and that the Tenant was provided with a blank copy of the move-in condition inspection report to complete and return in the event that she noticed any damage; ultimately both parties agreed that no condition inspection was completed and that the Landlord did not complete the condition inspection report or provide a copy of the completed report to the Tenant.

The parties agreed that a condition inspection was completed between them at the end of the tenancy; however, the parties disagreed about the condition of the rental unit at the end of the tenancy and whether a condition inspection report was completed at that time. The Tenant testified that no condition inspection report was completed by Agent during the inspection and that she was advised that everything looked great, with the exception of the blinds. The Agent testified that the rental unit was not clean or undamaged and that although a condition inspection report was completed, the Tenant refused to sign it. The Agent testified that a copy of the completed move-out condition inspection report was provided to the Tenant; however, the Tenant denied receipt.

Although the Landlord withheld \$485.00 of the Tenant's \$975.00 security deposit due to disagreement about whether damage to the rental unit was wear and tear, both parties agreed that there was no agreement between them for the Landlord to retain any portion of the security deposit at the end of the tenancy. Neither party submitted any evidence that the Landlord filed a claim with the Residential Tenancy Branch (the "Branch") seeking authority to withhold the security deposit, and in the hearing, the Agent testified that he is not aware whether an application was filed or not. The Agent also acknowledged that there was no outstanding Monetary Order from the Branch at the end of the tenancy.

While the Tenant stated that she received a \$490.00 cheque for the return of only a portion of her security deposit on February 22, 2018, she stated that the Landlord was

obligated under the *Act* to return her entire \$975.00 security deposit to her or file a claim seeking to withhold it.

Analysis

Section 23 of the *Act* states that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day, and that the landlord must complete and provide a copy of the condition inspection report to the tenant in accordance with the regulations. Section 24 of the *Act* states that 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 does not comply with section 23 of the *Act*.

As both parties were in agreement that no condition inspection was completed at the start of the tenancy and that no completed condition inspection report was provided to the Tenant by the Landlord or Agent, I find that the Landlord extinguished their right to claim against the Tenant's security deposit by filing an Application with the Branch. In any event, there was no evidence before me that any such application has been filed.

I accept the undisputed testimony of the parties that the Tenant provided her forwarding address in writing to the Landlord on February 13, 2018, and that the tenancy ended on February 15, 2018. Based on the above, and given the Agent's testimony that there was neither an outstanding Monetary Order or an agreement that the Landlord could retain any portion of the security deposit at the end of the tenancy, I therefore find that the Landlord was required, pursuant to section 38(1) of the *Act* to return the Tenant's security deposit to her, in full, no later than March 2, 2018, which is 15 days from the date the tenancy ended.

Both parties were in agreement that only \$490.00 of the \$975.00 security deposit was returned to the Tenant on February 22, 2018, and that the remaining \$485.00 remains in the possession of the Landlord. Section 38(6) of the *Act* states that if the landlord does not comply with their requirements under section 38(1) of the *Act* in relation to the return of the Tenant's security deposit or the filing of an Application seeking to retain it; the Landlord must pay the Tenant double the amount of the security deposit.

As a result, I find that the Tenant is entitled to \$1,460.00 pursuant to section 38(6) of the *Act*; 2 x \$975.00, less the \$490.00 already received. As the Tenant was successful in her Application, the Tenant is also entitled to recovery of the \$100.00 filing fee. As a result, the Tenant is entitled to a Monetary Order in the amount of \$1,560.00.

Despite the foregoing, the Landlord remains at liberty to file an application with the Branch seeking compensation from the Tenant for money owed or damage or loss under the *Act*, regulation, or tenancy agreement, should they wish to do so. However, the Landlord should be aware that any such Application will have no bearing on this decision or on the attached Monetary Order.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$1,560.00. 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 24, 2018

Residential Tenancy Branch