



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

On August 20, 2018 a hearing was conducted via conference call between these two parties. The tenant applied for a monetary order for recovery of a rent increase and return of the security deposit. Both parties attended, presented evidence and made submissions. The tenant was granted a monetary order. The landlord applied for a review of this decision for fraud. The arbitrator on review ordered the decision and accompanying order suspended pending a review hearing for the tenant's application on the issue of the security deposit only.

This is a review hearing granted for the landlords' review application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act.

Pursuant to sections 58 and 82 of the Act, I was designated to conduct a new hearing of the tenant's application.

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act.

Both parties attended the hearing and provided affirmed testimony. As both parties attended and confirmed receipt of the notice of a review hearing, the evidence and the issues to be dealt with, I find that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed for return of double the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that this tenancy began in December 1980 and ended on December 30, 2017.

The tenant seeks a clarified monetary claim of \$3,022.33 which consists of:

\$950.00	Return of Original Security Deposit
\$2,072.33	Accrued interest (December 1980-October 29, 2018)

1980 \$950.00: \$9.66 interest owing (12% rate for 8.47% of year)
 1981 \$950.00: \$115.16 interest owing (12% rate for 100.00% of year)
 1982 \$1063.97: \$128.98 interest owing (12% rate for 100.00% of year)
 1983 \$1191.65: \$107.84 interest owing (8% rate for 75.33% of year, 12% rate for 24.65% of year)
 1984 \$1302.78: \$104.93 interest owing (8% rate for 100.00% of year)
 1985 \$1407.03: \$113.33 interest owing (8% rate for 100.00% of year)
 1986 \$1519.57: \$122.39 interest owing (8% rate for 100.00% of year)
 1987 \$1641.13: \$90.41 interest owing (8% rate for 8.49% of year, 5.25% rate for 91.49% of year)
 1988 \$1734.96: \$91.49 interest owing (5.25% rate for 100.00% of year)
 1989 \$1826.06: \$142.43 interest owing (7.75% rate for 100.00% of year)
 1990 \$1963.69: \$178.07 interest owing (9% rate for 100.00% of year)
 1991 \$2138.33: \$177.66 interest owing (8.25% rate for 100.00% of year)
 1992 \$2316.11: \$81.33 interest owing (3.5% rate for 100.00% of year)
 1993 \$2406.53: \$66.34 interest owing (2.75% rate for 100.00% of year)
 1994 \$2474.23: \$24.77 interest owing (1% rate for 100.00% of year)
 1995 \$2502.65: \$87.84 interest owing (3.5% rate for 100.00% of year)
 1996 \$2584.92: \$77.75 interest owing (3% rate for 100.00% of year)
 1997 \$2663.59: \$6.66 interest owing (0.25% rate for 100.00% of year)
 1998 \$2676.45: \$40.19 interest owing (1.5% rate for 100.00% of year)
 1999 \$2713.75: \$61.17 interest owing (2.25% rate for 100.00% of year)
 2000 \$2773.09: \$55.56 interest owing (2% rate for 100.00% of year)
 2001 \$2829.15: \$85.08 interest owing (3% rate for 100.00% of year)
 2002 \$2911.61: \$0.00 interest owing (0% rate for 100.00% of year)

2003 \$2919.03: \$0.00 interest owing (0% rate for 100.00% of year)
 2004 \$2919.03: \$0.00 interest owing (0% rate for 100.00% of year)
 2005 \$2919.03: \$0.00 interest owing (0% rate for 100.00% of year)
 2006 \$2919.03: \$14.60 interest owing (0.5% rate for 100.00% of year)
 2007 \$2932.38: \$44.04 interest owing (1.5% rate for 100.00% of year)
 2008 \$2973.88: \$44.66 interest owing (1.5% rate for 100.00% of year)
 2009 \$3018.50: \$0.00 interest owing (0% rate for 100.00% of year)
 2010 \$3022.33: \$0.00 interest owing (0% rate for 100.00% of year)
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 2017 \$3022.33: \$0.00 interest owing (0% rate for 100.00% of year)
 2018 \$3022.33: \$0.00 interest owing (0% rate for 82.73% of year)

Both parties confirmed that the tenancy ended on December 30, 2017. The tenant provided undisputed affirmed testimony that the tenant's forwarding address in writing was served to the landlord on January 2, 2018. The landlord stated that it was received, but cannot confirm/dispute the date provided by the tenant.

The tenant claims that a \$950.00 security deposit was paid to the landlord. The landlord disputes this claim and that a \$475.00 security deposit was paid by the tenant. The tenant argued that at the beginning of the tenancy the landlord requested a \$950.00 security deposit (equal to one months' rent). The tenant claims that she complied by making a \$475.00 payment in December 1980 followed by second payment of \$475.00 on January 2, 1981. The landlord argued that in all of their history as landlords, never has the landlord requested a security deposit more than ½ of the monthly rent. In this case, the landlord argued that based upon the original rent, only a \$475.00 security deposit was paid by the tenant. The tenant has referred to a log book provided by the landlord in a review consideration decision. The tenant argued she has provided evidence "based on truth" and that the landlord has provided fraudulent evidence that only a \$475.00 payment was made in May 1981. Both parties agreed that at the end of tenancy, the landlord offered to return \$475.00 as the security deposit, but that the tenant refused as she felt that she was entitled to \$950.00 plus interest.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to

the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant seeks a monetary claim of \$3,022.33 which consists of a \$950.00 security deposit paid and \$2,072.33 in accrued interest (December 1980-October 29, 2018). The landlord has disputed this claim arguing that only a \$475.00 security deposit was paid. Both parties rely heavily on their direct testimony provided during the hearing. The tenant has referenced a log book/journal that was presented in the review application granting this review hearing as fraudulent and that it cannot be relied upon. The landlord has provided disputed, but consistent testimony that the landlord had only requested and received a security deposit of \$475.00, which the landlord claims that at no time has the landlord ever requested more than ½ of the monthly rent in his history as a landlord. The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, I find on a balance of probabilities that the tenant has failed to provide sufficient evidence to establish that the security deposit paid was \$950.00. On this basis, I find as the landlord has confirmed that a \$475.00 security deposit was paid that the tenant is entitled to return of \$475.00 as the security deposit.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the *Act* equivalent to the value of the security and/or pet damage deposit(s).

Both parties confirmed that the tenancy ended on December 30, 2017 and that the tenant provided undisputed affirmed evidence that the tenant's forwarding address in writing was served to the landlord on January 2, 2018. Both parties confirmed in their direct testimony that the landlord offered to return \$475.00, but that this was refused by the tenant as she felt she was entitled to what she claimed. Subsequently, the landlord did not return the security deposit within the allowed 15 day period, nor did the landlord apply for dispute of returning the disputed security deposit. Both parties confirmed that the landlord did not have permission from the tenant to retain the security deposit. On this basis, I find that the landlord failed to comply with section 38(1) of the *Act* and is subject to section 38(6) and is required to pay the tenant the equivalent amount of \$475.00.

The tenant has established an entitlement for return of the original \$475.00 security deposit, \$1,036.17 in accrued interest and \$475.00 in compensation (Sec. 38(6)).

Conclusion

The tenant is granted a monetary order for \$1,986.17.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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: November 07, 2018

Residential Tenancy Branch