



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TONY WATERS AGENCIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF MNSD MNDCL-S

Introduction

This hearing was convened in response to an application from both parties pursuant to the *Residential Tenancy Act* (“*Act*”):

The landlord applied for:

- a Monetary Order pursuant to section 67 of the *Act* and to retain the tenant’s security deposit; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant applied for:

- a return of her security deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the tenant’s agent, J.W. (the “tenant”) attended the hearing by way of conference call which lasted approximately 15 minutes. The tenant was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant confirmed receipt of the landlord’s application for dispute and evidentiary package and explained she sent her application for dispute to the landlord by way of Canada Post Registered Mail. The tenant said this application for dispute was sent on August 23, 2018. The tenant provided a copy of the Canada Post tracking number associated with the application for dispute. Pursuant to sections 88, 89 & 90 of the *Act* the landlord is deemed to have been served with this application for dispute and its accompanying evidence on August 28, 2018, five days after its posting.

Issue(s) to be Decided

Is either party entitled to a monetary award, including a return of the filing fee?

Can either party retain the security deposit?

Background and Evidence

Undisputed testimony provided by the tenant explained this tenancy began on August 1, 2017 and ended on July 30, 2018. Rent was \$3,850.00 per month, and a security deposit of \$1,925.00 paid at the outset of the tenancy, continues to be held by the landlord.

The tenant said she performed a condition inspection of the rental unit with the landlord on July 30, 2018. Following this condition inspection, the tenant said she gave the landlord her forwarding address in writing. The tenant explained this address was provided to the landlord directly on the condition inspection report performed by the parties. The tenant said did not provide the landlord with written authorization to retain any portion of the security deposit. The tenant seeks a return of the security deposit with the doubling provisions allowable under section 38 of the *Act*. The tenant said she applied for a return of the security deposit on August 20, 2018.

The landlord has applied for a monetary award of \$946.50. Some evidence was provided as part of the landlord's application for dispute; however, the landlord did not attend the hearing and no submissions related to the landlord's application for a monetary ward were provided by the landlord or an agent during the hearing.

Analysis

I will begin by analyzing the tenant's application for dispute and then turn my attention to the landlord's application for a monetary award.

Section 38 of the *Act* requires the landlord to either return a tenant's security or pet deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and upon receipt of the tenant's forwarding address in writing. In this case, the tenant's forwarding address was provided to the landlord in writing on July 30, 2018. The landlord therefore had until August 14, 2018 to apply for dispute resolution or to return the deposit. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to

double the value of the security or pet deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

A review of the landlord's application for dispute shows the landlord applied to retain the tenant's security deposit on August 13, 2018, I find no evidence that the tenant provided the landlord with written authorization to retain any portion of the security deposit, nor was an order provided by an arbitrator allowing the landlord to retain any portion. I therefore, order the landlord return the security deposit to the tenant in its entirety. I decline to double the security deposit pursuant to section 38 of the *Act* because a review of the landlord's application reveals the landlord applied to retain the security deposit within the fifteen day time limit allowable under section 38.

I now turn my attention to the landlord's application for a monetary award. 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. In this case, the onus is on the landlord to prove entitlement to a monetary award.

I find the landlord's failure to attend the hearing and provide any submissions in relation to the evidentiary package provided as part of their application for dispute has led to its dismissal. The landlord's non-attendance at the hearing prevented me from understanding their application and I therefore decline to award any damages for alleged loss. *Rule of Procedure 7.3* states as follows:

If a party or their agent does not attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that part, or dismiss the application with, or without leave to re-apply.

I dismiss the landlord's application without leave to reapply. The landlord had proper notice of the hearing and failed to attend at the designated time.

As the tenant was successful in her application, she may pursuant to section 72 of the *Act* recover the \$100.00 filing fee from the landlord.

The landlord must bear the cost of his own filing fee.

Conclusion

I issue a Monetary Order of \$2,025.00 in favour of the tenant. This amount includes a return of the security deposit in its entirety and a return of the filing fee.

The tenant is provided with a Monetary 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.

The landlord's application for a monetary award is dismissed without leave to reapply. The landlord must bear the cost of his own filing fee.

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: December 10, 2018

Residential Tenancy Branch