



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord, tenant Y.L. (the "tenant"), the tenant's agent and a witness for the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue- Service of Documents

The tenant's advocate testified that the landlord was served the notice of dispute resolution package by registered mail on August 3, 2018. The tenant's advocate provided the Canada Post Tracking Number to confirm this registered mailing. The landlord confirmed receipt of the dispute resolution package but did not know on what date. I find that the landlord was deemed served with this package on August 8, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Both parties agreed that the landlord was personally served with the tenants' amendment package and first evidence package on November 14, 2018. I find that the tenants' amendment package was served on the landlord on November 14, 2018 in accordance with sections 88 and 89 of the *Act*.

The tenant testified that she and the witness attended at the landlord's property on November 15, 2018 to serve the tenants' second evidence package on the landlord. The tenant testified that the landlord's mother opened the door but would not accept service of the evidence package and that it fell on the ground in front of the landlord's front door. The witness corroborated the tenant's above testimony. The landlord testified that she did not receive the tenants' second evidence package.

Section 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the "Rules") states that evidence not submitted at the time of Application for Dispute Resolution that are intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that since the landlord did not receive the tenants' second evidence package, the second evidence package is not admitted into evidence.

Preliminary Issue- Landlord's Claim

The landlord testified that she wanted her claim for monetary damages arising out of this tenancy to be heard at today's hearing. I asked the landlord if she had made an application to the Residential Tenancy Branch ("RTB") and either paid the \$100.00 filing fee or applied for a fee waiver. The landlord testified that she did not pay the \$100.00 filing fee or apply for a fee waiver. The landlord testified that she attended at the Residential Tenancy Branch and someone uploaded her evidence on the tenants' application. The file number the landlord provided me with was the file number for the tenant's application.

Both parties testified that the landlord's evidence package was personally served on the tenant on November 16, 2018. The tenant testified that the evidence package did not contain an application for dispute resolution. I find that the landlord's evidence package was served on the tenant in accordance with section 88 of the *Act*.

I found no mention of the landlord filing a dispute resolution application in the RTB system.

At the hearing I informed both parties that I would not be hearing the landlord's claims as there was no record of her filing for dispute resolution. I also informed both parties that they both had two years from the date the tenancy ended to file a claim for dispute resolution.

Issue(s) to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in September of 2016 and ended on June 30, 2018. Monthly rent in the amount of \$2,300.00 was payable on the first day of each month. A security deposit of \$1,150.00 and a pet damage deposit of \$500.00 was paid by the tenants to the landlord.

The tenant testified that on May 30, 2018 she personally served the landlord with one month's written notice to end tenancy effective June 30, 2018. The landlord testified that the tenant put the one month's written notice to end tenancy in her mailbox and that she received it on May 30, 2018. The one month's notice to end tenancy was entered into evidence.

The tenant testified that during the tenancy she provided the landlord with six post-dated cheques at a time and that when she gave the landlord notice of her intention to vacate the subject rental property, the landlord had post-dated cheques for June, July and August 2018. The tenant testified that after she gave her notice to end tenancy, she asked the landlord to return the post-dated cheques for July and August 2018 and that the landlord told her that she had already destroyed them.

Both parties agree that the landlord cashed the July 2018 rent cheque in the amount of \$2,300.00 after the tenants moved out. The landlord testified that the July 2018 rent cheque was accidentally cashed, but that she decided to keep the money from the July 2018 rent cheque when she saw all of the damage the tenants had caused to the

subject rental property. The tenant entered into evidence text messages between the tenant and the landlord which confirm that the landlord cashed the July 2018 rent cheque and refused to refund the money to the tenant when she asked for it.

The tenant testified that she provided the landlord with her forwarding address in writing via UPS on July 9, 2018. A UPS receipt stating same was uploaded into evidence. The tenant's July 9, 2018 letter was entered into evidence. The landlord testified that she received the tenant's forwarding address in writing on July 11, 2018.

Both parties agreed that the landlord has not returned the tenant's security or pet damage deposits. The landlord has not filed an application with the RTB to retain the tenants' security or pet damage deposits.

The landlord testified that the tenant verbally agreed to let the landlord retain the security and pet damage deposits. The tenant denied making the aforementioned verbal agreement.

Analysis

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement. I find that, pursuant to section 45(1), the tenants ended their tenancy effective June 30, 2018. Therefore, the landlord had no authority or right to cash the tenants' July 2018 rent cheque or to retain those funds. I find that tenants are entitled to the return of their July 2018 rent in the amount of \$2,300.00 from the landlord.

Section 38 of the *Act* requires the landlord to either return the tenants' security and pet damage deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. 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 deposit.

However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that service of the tenants' forwarding address in writing was effected on the landlord on July 11, 2018 in accordance with section 88 of the *Act*. I find that the landlord did not return the security and pet damage deposits or make an application for dispute resolution to claim against them. I find that the landlord has not established, on a balance of probabilities, that the tenant agreed that the landlord could retain her security and pet damage deposits.

Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double their security and pet damage deposits as per the following calculations:

\$1,150.00 (security deposit) * 2 = \$2,300.00

\$500.00 (pet damage deposit) *2= \$1,000.00

Total: \$3,300

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenants under the following terms:

Item	Amount
July rent	\$2,300.00
Doubled security deposit	\$2,300.00
Doubled pet damage deposit	\$1,000.00
Filing Fee	\$100.00
TOTAL	\$5,700.00

The tenants are 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: December 05, 2018

Residential Tenancy Branch