



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, RPP

Introduction

On November 6, 2018, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking a return of her security deposit pursuant to Section 38 of the *Act*, and seeking a return of her personal property pursuant to Section 65 of the *Act*.

On November 28, 2018, the Tenant amended her Application to increase the amount of monetary compensation she was seeking.

The Tenant attended the hearing with L.B. as her advocate. The Landlord attended the hearing as well. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package to the Landlord by registered mail on November 7, 2018 (the registered mail tracking number is on the first page of this Application). The Landlord stated that he did not receive this package as he was on vacation; however, he heard about the hearing when he was served the amendment on November 28, 2018. In accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was deemed to have received the Notice of Hearing package five days after it was mailed.

The Tenant advised that she served her evidence to the Landlord by having her friend put it in his mailbox on November 28, 2018. The Landlord confirmed that he received this evidence. The Landlord advised that he served his evidence to the Tenant by posting it to the Tenant’s door on December 6, 2018. The Tenant confirmed that she received this and that she was prepared to respond to the evidence. As such, I have accepted all of the evidence and considered it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of her security deposit?
- Is the Tenant entitled to monetary compensation?
- Is the Tenant entitled to a return of her personal property?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on February 15, 2018 and ended when the Tenant was forcibly removed by the police on November 4, 2018. Rent was established at \$975.00 per month, due on the 15th of each month. A security deposit of \$482.50 was paid.

Both parties agreed that the Tenant provided a forwarding address to the Landlord by text message on November 4, 2018 and then provided a forwarding address in writing when she served her amendment on November 28, 2018.

The Tenant's original Application outlined a request for monetary compensation in the amount of \$5,826.80. Her amendment Application then indicated that she was originally seeking \$6,314.30 but seeking to increase this amount to \$16,208.46. However, during the hearing the Tenant advised that she did not detail her specific requests for monetary compensation in some form of a monetary order worksheet nor was she able to clearly state how her claims totaled any of the three differing amounts. Furthermore, the Landlord advised that it was not clear to him what the Tenant was seeking compensation for nor were the amounts of compensation outlined specifically in the Tenant's evidence.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Pursuant to Section 38 of the *Act*, if the Tenant wants the security deposit returned, she must provide a forwarding address in writing to the Landlord first. The undisputed evidence is that the Tenant had provided the Landlord with her forwarding address via text on November 4, 2018 and then made her Application seeking a return of the deposit on November 6, 2018. As the Tenant made her Application within the Landlord's 15 days to either return the deposit in full or file an Application for Dispute Resolution, I find the Tenant's Application to be premature. Therefore, the Landlord is put on notice that he now has the forwarding address and he must deal with the security deposit pursuant to Section 38. The Landlord is deemed to have received the decision 5 days after the date it was written and will have 15 days from that date to deal with the deposit.

If the Landlord does not deal with the security deposit pursuant to Section 38 of the *Act* within 15 days of being deemed to have received the decision, the Tenant can then re-apply for double the deposit, pursuant to the *Act*.

Section 59(2) of the *Act* requires the party making the Application to detail the full particulars of the dispute. During the hearing, the Tenant was asked to specifically outline her requests for monetary compensation totaling the \$16,208.46 that she was seeking. However, she was unable to provide details summarizing her claims for this amount. Furthermore, the Landlord did not know what the Tenant was specifically claiming for and did not sufficiently know the case against him.

Consequently, I do not find that the Tenant has made it abundantly clear to any party that she is certain of the exact amounts she believes is owed by the Landlord. As I am

not satisfied that the Tenant outlined her claims precisely, with clarity, I do not find that the Tenant has adequately established a claim for a Monetary Order pursuant to Section 59(2) of the *Act*. In addition, Section 59(5) allows me to dismiss this Application because the full particulars are not outlined. For the reasons above, I dismiss the Tenant's Application with leave to reapply.

With respect to the Tenant's claims for a return of her personal property, she advised that she received her personal property back and that she is no longer seeking this claim. However, she contends that she will be seeking a future compensatory claim for the condition that her property was returned to her in. As such, I have dismissed the Tenant's claim for a return of her personal property without leave to reapply.

Conclusion

Based on my findings above, I dismiss the Tenant's Application for a return of the security deposit and for compensation with leave to reapply. I dismiss the Tenant's Application for a return of her personal property in its entirety.

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 17, 2018

Residential Tenancy Branch