



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNSD RPP**

Introduction

This hearing dealt with the tenant's application pursuant to the Residential Tenancy Act (the "Act") for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- an order requiring the landlord to return the tenant's personal property pursuant to section 65.

The tenant represented herself and the landlord GJ attended and was represented by his relative, MJ as he required interpretation. The landlord RJ, who did not attend, was also represented by GJ. The hearing process was explained and the participants were provided the opportunity to ask questions. Both parties provided sworn testimony and were provided the opportunity to present their evidence, orally and in written documentary form, call witnesses and make submissions to me.

The parties acknowledged the exchange of evidence, with the exception of the preliminary matter stated below. The parties indicated there were no concerns with timely service of documents and were prepared to deal with the matters of the applications.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter

On January 7, 2019, three (3) days before the hearing, the landlord filed evidence in relation to this file. Both parties had the opportunity to be heard on the question of accepting the late evidence. The tenant denied she was served with a copy of the

evidence and the landlord admitted he did not serve the tenant with it because he didn't know he was required to do so. I asked the landlord whether this was new evidence that was unavailable to obtain sooner than 3 days ago and he admitted that it was not. Rule 3.17 of the *Residential Tenancy Branch Rules of Procedure* allow the arbitrator to decide whether or not to allow this late evidence. At the commencement of the hearing, I ruled that accepting the landlord's late evidence would be prejudicial against the tenant and exercised my discretion to not allow it.

Issue(s) to be Decided

Is the tenant entitled to an order for return of her security deposit?
Is the landlord required to return the tenant's personal property?

Background and Evidence

The tenant filed a copy of the tenancy agreement which states the tenancy began on January 8, 2018 as a month to month tenancy with rent at \$800.00 per month payable on the 8th day of each month. Both parties confirm that a security deposit in the amount of \$450.00 was given to the landlord and that the landlord still holds it.

The rental unit is the basement suite of a house. The tenant moved out of the rental unit on September 3, 2018 after giving the landlord verbal notice to end the tenancy on August 11, 2018. There was no condition inspection done at the commencement of the tenancy agreement, nor was one completed when the tenancy ended. Some time in April, 2018 the tenant got a roommate and the rent was increased to \$1,150.00 per month, payable on the 11th day of each month. No new tenancy agreement was signed.

The tenant gave undisputed testimony that she sent the landlord notice of her forwarding address and request for a return of her security deposit by registered mail on October 9, 2018. The tenant also provided me with a letter of response from the landlord acknowledging receipt of the letter on October 13, 2018 advising the tenant there was damage done to the suite.

The landlord gave undisputed testimony that no condition inspection report was done at the beginning or end of the tenancy. The tenant moved out on September 3, 2018 and the roommate moved out on September 9, 2018. When the roommate vacated, the landlord claims he discovered damage to the suite caused by the tenant's installation of a bidet in the bathroom. In response to the tenant's request for the return of the security deposit, the landlord replied with a letter seeking compensation for the damage to the

bathroom. He did not file an application for dispute resolution against the tenant or the roommate seeking compensation for the damage.

Analysis

Section 38 of the *Act* addresses the return of security deposits.

- 38** (1) Except as provided in subsection (3) or (4) (a), **within 15 days after** the later of
(a) the date the tenancy ends, and
(b) **the date the landlord receives the tenant's forwarding address in writing,**

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord does not dispute receiving the tenant's forwarding address in writing on or before October 13, 2018. The landlord wrote a letter to the tenant in response advising her of alleged damage to the suite. The landlord did not file any application for dispute resolution claiming against the security deposit and did not return it to the tenant within 15 days, or by October 28, 2018. As the landlord did not comply with section 38(1) of the *Act*, the landlord may not make a claim against it and is required to pay the tenant double the amount of the security deposit, \$900.00.

Return of Personal Property

The tenant did not provide any evidence that the landlord is withholding any of the tenant's personal property. I dismiss this portion of the tenant's application without leave to reapply.

Filing Fee

As the tenant was successful in her application for a monetary order, I award her the cost of filing the application.

Conclusion

I order that the tenant is entitled to a monetary order in the sum of \$1,000.00. I order that the landlord(s) pay this sum forthwith.

The tenant is provided with an Order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, it 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: January 10, 2019

Residential Tenancy Branch