



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNDCT, MNSD, FFT
MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

The matter initially proceeded by way of a hearing on October 18, 2018 and dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”). A Decision and Order for that hearing was issued on November 5, 2018, granting the Tenant a Monetary Order in the amount of \$5,595.41.

On November 15, 2018, the Landlord was granted her application for review consideration, and the Decision and Order dated November 5, 2018, were suspended until the Review Hearing scheduled for January 7, 2018. The Landlord’s application for review consideration had been granted on the grounds that new evidence establishes the date of application. Pursuant to section 82(2)(c) of the Act, it was ordered that a new hearing be held with the condition that the new hearing considers solely the matters related to the timing of the Landlord’s application claiming against the security deposit.

This Review Hearing decision should be read in conjunction with the Original Hearing decision dated November 5, 2018, and the Review Consideration decision dated November 15, 2018.

Both the Landlord and the Tenant attended the Review Hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony 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.

Issue to be Decided

- Did the Landlord file her application claiming against the security deposit and pet damage deposit (the “Deposits”) within the legislated timeline?

Background and Evidence

The parties agreed that the tenancy began on January 15, 2018, as a 12-month fixed term tenancy, ending January 31, 2019. Rent in the amount of \$1,800.00 was to be paid by the first day of each month and the Landlord had been given a \$1,200.00 security deposit (\$1,000.00 rental unit and \$200.00 key's), as well as a \$1000.00 pet damage deposit at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement, a three-page addendum and an additional two-page addendum into documentary evidence.

The parties agreed that this tenancy ended as a result of the Landlord issuing a 10-Day Notice for Non-Payment, that lead to a previous dispute resolution hearing with this office. The decision from that hearing included an Order of Possession and a Monetary Order for the Landlord. The parties agreed that the Tenant moved out of the rental unit on May 31, 2018, in accordance with that decision and the Monetary Order has been paid in full.

The Landlord testified that she attended her local Residential Tenancy Branch (RTB) on Friday, June 15, 2018, at 3:30 p.m. to file her application to claim against the Tenant's Deposits. The Landlord testified that there had been a long line of people waiting for assistance at the RTB when she arrived. The Landlord testified that she was advised by RTB staff that due to the 4:00 p.m. scheduled closing time of the RTB office that the office would not have time to assist her that day and that she would have to come back on the next business day, which was Monday, June 18, 2018. The Landlord testified that the staff booked her an appointment for June 18, 2018, at 9:30 a.m. The Landlord submitted a copy of the appointment receipt she received from the RTB office, into documentary evidence.

The Landlord testified that she did attend the Office on June 18, 2018, as scheduled, and filed her application to claim against the Tenant's Deposits, using one of the RTB

office's computers. The Landlord testified that her personal computer had not been working correctly and that she needed to use the of the RTB office computer in order to file her application.

The Tenant testified that he does not think that it is right that the Landlord would be given extra time to file her application. The Tenant testified that he believed that the Landlord's computer was working fine as she had used it to submit her evidence for these proceedings.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

Return of security deposit and pet damage deposit

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.

I find that this tenancy ended on May 31, 2018, the date the tenant moved out and that the Tenant provided the Landlord with his forwarding address on June 1, 2018.

Accordingly, the Landlord had until June 16, 2018, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposit.

I accept the Landlord's testimony and evidence that she attempted to file her application on-time at her local RTB office but that due to high volumes of clients waiting to be seen at the time she attended the office, the staff decided to send the Landlord away until the following business day, without accepting her application.

I find that the volume of clients attending the RTB office could not be anticipated by the Landlord and that the delay in the processing of the Landlord's application, was an administrative necessity of the RTB and could not have been for seen by the Landlord.

Consequently, I find that the Landlord intended to submit her application on June 15, 2018, the day she attended the RTB office but was sent away by RTB staff. Therefore, I find that the Landlord's application, claiming against the Tenant's Deposits was presented to the RTB within the legislated timeline.

Based on the above I find that the Tenant is entitled to the return of his actual deposits, in the amount of \$2,200.00, and not the double amount as granted in the original decision.

Section 82 of the *Act* speaks to Review of Director's decision and order, and provides in part as follows:

Review of director's decision or order

82 (2) The director may conduct a review

(c) by holding a new hearing.

(3) Following the review, the director may confirm, vary or set aside the original decision or order.

Arising from the finding set out above, and pursuant to section 82 of the Act, I hereby order that the original Decision and Monetary Order dated November 5, 2018, be varied from \$5,595.41 to \$3,395.41.

Conclusion

Therefore, I order the Monetary Order issued on November 5, 2018 in the amount of \$5,595.41 is set aside and cancelled.

Pursuant to section 82 of the *Act*, I grant a **Monetary Order**, issued to the Tenant, to the amount of **\$3,395.41**. The Tenant is 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: January 9, 2019

Residential Tenancy Branch