



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT MNSD

Introduction

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

- a return of the filing fee pursuant to section 72 of the *Act*;
- a monetary award pursuant to section 67 of the *Act*; and
- an order directing the landlords to return their security deposit pursuant to section 38 of the *Act*.

Both the landlord and the tenant appeared at the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant explained that he sent both his application for dispute and his evidentiary package to the landlord by way of Canada Post Registered Mail on October 12, 2018. The tenant provided a copy of the Canada Post Registered Mail tracking number to the hearing. The tenant said the package was returned to him after it was found to be “undelivered.” After considering the testimony presented by the tenant and having reviewed the Canada Post documents, I find pursuant to sections 88, 89 & 90 of the *Act*, that the landlord is deemed served with this evidence on October 17, 2018, five days after it was sent by Canada Post Registered Mail. The address presented by the tenant matched the address of the landlord. A party cannot evade service of documents in an effort to avoid the proceedings. For these reasons, I deem the landlord served with the application for dispute and evidentiary package.

The landlord acknowledged that she did not serve the tenant with her evidentiary package. She said she was only made aware of the hearing after having received an automatically generated email sent to her by the Residential Tenancy Branch.

Residential Tenancy Rule of Procedure 3.14 states as follows, “The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the

applicant...Subject to Rule 3.17 the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing." By the landlord's own admission, she did not serve her evidence to the tenant. I therefore decline to consider this evidence pursuant to *Rule of Procedure 3.14*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award?

Can the tenant recover his filing fee? If so, should it be doubled?

Background and Evidence

This tenancy began on May 1, 2018 and ended on September 15, 2018. Rent was \$1,300.00 per month and a security deposit of \$600.00 paid at the outset of the tenancy continues to be held by the landlord.

On September 5, 2018, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant acknowledged that no rent was paid for September but alleged that he and the landlord had reached an understanding related to payment of rent for September 2018. The tenant said his relationship with the landlord had deteriorated in August and September 2018 and he chose to move from the rental unit. Following his departure the tenant sought a return of his security deposit. The tenant argued that the landlord had failed to return his deposit despite being given his forwarding address in writing. The tenant explained he placed a copy of his forwarding address in writing in the landlord's mailbox on September 18, 2018. The landlord acknowledged receipt of this address but described a large amount of damage and debris which was allegedly left in the rental unit following the conclusion of the tenancy.

The tenant sought a monetary award of \$1,850.00 representing \$650.00 (half of one month's rent) related to moving expenses and hardship as a result of the landlord's supposed "illegal" eviction, while the tenant also applied for \$1,200.00 representing a return of the security deposit with the penalty of section 38 of the *Act* applied to the deposit.

The parties both conceded that two attempts to meet for a condition inspection of the unit at the conclusion of the tenancy were missed. The parties provided conflicting versions of events related to these missed condition inspection meetings but both parties acknowledged that two separate meetings were scheduled and missed.

Analysis

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 tenant to prove his claim for a monetary award.

The tenant sought a monetary award of \$650.00 related to moving expenses, hardship and an illegal eviction. I find little information was presented by the tenant in support of his allegations. The landlord issued a 10 Day Notice to End Tenancy for Unpaid rent on September 5, 2018. The tenant vacated the premises on September 15, 2018. No evidence was presented that the tenant was unduly pressured to move or forced from the home by the landlord. I find the tenant has failed to demonstrate that damage or loss stemmed from a violation of the tenancy agreement or through a contravention of the *Act*. For these reasons, I decline to award the tenant a monetary award.

The second portion of the tenant's application concerns a return of the security deposit. The tenant explained that he placed a copy of his forwarding address in writing in the landlord's mailbox on September 18, 2018. The landlord acknowledged receiving the address and withholding the security deposit but argued a large amount of damage and debris was present in the unit following the conclusion of the tenancy. Furthermore, the landlord said rent remained unpaid for August and September 2018 and she argued the tenant had failed to attend the condition inspection

Section 38(1) 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. 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.

After having considered the testimony of both parties and having reviewed the tenant's evidence, I find the tenant has sufficiently demonstrated that the landlord failed to return his security deposit within 15 days of receiving his forwarding address in writing. The landlord acknowledged during the hearing that she continues to hold the deposit and that she did not apply to do so. Following the conclusion of a tenancy, a landlord cannot simply withhold a deposit because of perceived damage to a rental unit. A landlord must apply to do so.

I order the landlord to return the outstanding security deposit of \$1,200.00 to the tenant. This amount includes the doubling provision as described in section 38(6)(b) of the *Act*.

As the tenant was successful in his application he may recover the \$100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,300.00 against the landlord. This amount includes a return of the outstanding security deposit (including doubling provisions) with 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.

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: February 5, 2019

Residential Tenancy Branch