



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

- authorization to obtain a return of her security deposit pursuant to sections 38 and 67;
- a request for a monetary award of double the amount of the security deposit pursuant to sections 38 and 67;
- a monetary order for compensation for landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to sections 51 and 67; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72

The tenant attended the hearing. Landlord, AD attended the hearing with representative RB. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution, the tenant's amendments and the tenant's evidence. I find that the landlord was served in accordance with the *Act*. The tenant testified that she received the landlords' evidence two days before the hearing.

Preliminary Matters:

Service of Landlords' Evidence

The tenant testified that she received the landlord's evidence two days before the hearing.

Residential Tenancy Branch Rules of Procedure, section 3.15 states that:

...The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. 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**. [emphasis add]

I find that the landlords did not serve their evidence in compliance with the *Residential Tenancy Branch Rules of Procedure*. Furthermore, I find that the admission of this late evidence would prejudice the tenant. Accordingly, the landlords' evidence is excluded pursuant to *Residential Tenancy Branch Rules of Procedure*, section 3.12.

Severance of Unrelated Claims

Residential Tenancy Branch Rules of Procedure, section 2.3 states that:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the tenant's claim for a return of the deposit is not sufficiently related to the tenant's other claim for a monetary award regarding landlords' Two Month Notice to warrant that these claims be heard together.

The tenant's other claim relating to the Two Month Notice is unrelated in that it does not pertain to the facts relevant to the determination of whether the tenant is entitled to a return of the security deposit. I exercise my discretion to dismiss with leave to reapply the tenant's application for a monetary order for compensation for landlords' Two Month Notice pursuant to sections 51 and 67.

Issue(s) to be Decided

Is the tenant entitled to an order for return of their security deposit pursuant to section 38?

If so, is the tenant entitled to an amount equal to double the security deposit pursuant to section 38 and 67?

Is the tenant entitled to recover their filing fee for this application from the landlords pursuant to section 72?

Background and Evidence

The parties agreed that the tenancy commenced on August 1, 2016. The rent was \$700.00 per month and the tenant paid a \$350.00 security deposit. There was no pet damage deposit. A copy of the tenancy agreement was submitted as evidence.

The parties agreed that they conducted a walkthrough inspection with the landlord at move in and that the parties did not complete a condition inspection report.

The parties also agreed that the tenancy ended on October 30, 2018 and both parties participated in a walkthrough inspection on November 1, 2018. The parties agreed that they did not complete a condition inspection report on move out.

The tenant testified that she verbally provided the landlords with her forwarding address on October 20, 2018. The tenant testified that the landlords wrote her forwarding address down. The landlords did not recall the specific date on which they were advised of the forwarding address but they did acknowledge receiving the tenant's forwarding address.

The parties agreed that the landlords have not returned the security deposit or made an application to retain the deposit. The parties also agreed that they have not reached an agreement regarding the retention of the deposit.

The tenant testified that the rental unit was in good condition when she moved out. The landlords testified that the tenant damaged the property.

Analysis

Section 24(b) of the *Act* states that, “The right of a landlord to claim against a security deposit ... for damage to residential property is extinguished if the landlord does not complete the condition inspection report...” Based on the agreed testimony of both parties, I find that the landlord did not complete a condition inspection report on either the move in or move out of the tenants. Accordingly, the landlord’s right to claim against the security deposit for damage to the rental unit has been extinguished pursuant to section 24(2) of the *Act*.

Furthermore, section 38 of the *Act* states that:

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.

Based on the agreed testimony of both parties, I find that the tenancy ended on October 30, 2018. On the basis of the undisputed testimony of the tenant, I find that the tenant verbally provided the landlords with her forwarding address on October 20, 2018.

Section 38 of the *Act* requires that the forwarding address be delivered in writing. In this matter, the tenant testified that, although she verbally told the landlords her forwarding address, the landlords wrote the address down. Pursuant to section 71(2)(b) of the *Act*, I find that the tenant has sufficiently delivered her forwarding address for the purposes of section 38 of the *Act*.

The landlords had 15 days after the end of the tenancy and the delivery of the tenant’s forwarding address to repay the full deposit or file an application for dispute resolution pursuant to section 38(1) of the *Act*. Since the forwarding address was provided on

October 20, 2018 and the tenancy ended on October 30, the landlords' deadline to repay the deposit or file an application for dispute resolution was November 14, 2018.

I find that the landlords did not perform either of these requirements by the November 14, 2018 deadline. Although the landlords have claimed that the property was damaged by the tenants, this is not relevant to the tenant's claim herein for return of her security deposit because the landlords did not file an application for dispute resolution regarding this claim for damage before the deadline of November 14, 2018.

Accordingly, I find that the landlords are in violation of section 38(1) of the *Act*. However, the landlords are still at liberty to file an application for dispute resolution regarding any claims for damages to the rental unit.

According to section 38(6) of the *Act*, if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit. Since I have determined that the landlords have violated section 38(1) of the *Act*, I find that the landlords must pay the tenant double the amount of the security deposit.

In addition, since the tenant has been successful this matter, I award the tenant \$100.00 for recovery of the filing fee.

The total award to the tenant is accordingly \$800.00 as set forth below:

Item	Amount
Recovery of double the security deposit (\$350.00 multiplied by 2)	\$700.00
Filing recovered by tenants	\$100.00
Total award to tenants	\$800.00

Accordingly, I order the landlords to pay the tenant the sum of \$800.00.

Conclusion

I dismiss with leave to reapply the tenant's application for a monetary order for compensation for landlords' Two Month Notice pursuant to sections 51 and 67.

The landlords' right to retain the security deposit is extinguished.

I grant the tenant reimbursement of the \$100.00 filing fee.

I grant the tenant a monetary order in the amount of **\$800.00**. If the landlords fail to comply with this order, the tenant may file the order in the Provincial Court to be 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 13, 2019

Residential Tenancy Branch