



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:

- A return of their security deposit pursuant to section 38;
- A monetary award for damages or loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was assisted by a family member.

As both parties were present service of documents was confirmed. The parties each confirmed that they are in receipt of the other's materials. Based on the testimony I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Adjournment Request

At the outset of the hearing the landlord claimed that they do not understand English and requested the hearing be adjourned or that the Branch provide an interpreter.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure grants me the authority to determine whether the circumstances warrant an adjournment of the hearing.

Rule 7.9 lists some of the criteria to consider:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;

- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

There is no evidence that the landlord had taken any effort to obtain an interpreter or seek an adjournment prior to the hearing. The landlord provided documentary evidence prior to the hearing including written arguments and submissions. The landlord was assisted by a family member who stated they were not a professional interpreter, but was fluent in both English and the landlord's native language. The family member was able to respond to questions and present oral evidence.

I find that the landlord's failure to seek an adjournment at an earlier date or to make arrangements for an interpreter is the result of the landlord's own inaction. Under the circumstances, as the landlord was assisted by a family member who could provide interpretation, I find that there is little evidence that it would be prejudicial to the landlord to proceed with the hearing.

As such, I dismiss the landlord's oral application for an adjournment. I find that the landlord has not met the criteria established for granting an adjournment. I find that the landlord has failed to provide documentary evidence in support of their request for an adjournment. I find that there is little prejudice to proceed with a teleconference hearing, and that the landlord's request arises from their own failure to take appropriate actions prior to the hearing date.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed? Is the tenant entitled to recover their security deposit? Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

This periodic tenancy began in May 2015 and ended on January 31, 2017 in accordance with a 2 Month Notice to End Tenancy for Landlord's Use. The monthly rent was \$1,650.00 payable on the 1st of each month. A security deposit of \$825.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at any time for this tenancy.

The parties agree that despite being issued a 2 Month Notice they paid rent in the amount of \$1,500.00 for the last month of the tenancy. The tenant seeks a monetary award in that amount.

The tenant gave evidence that they provided a forwarding address to the landlord by a letter dated January 31, 2019. The tenant authorized the landlord to make deductions for utility bills from the security deposit but did not authorize any other deductions. The tenant said that the landlord was responsible for providing the invoices showing the deductions but received no correspondence from the landlord. The tenant testified that based on the invoices now submitted by the landlord they believe what was owed was \$1,030.00.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receiving a forwarding address in writing. If that does not occur, the landlord must pay a monetary award pursuant to section 38(6) of the *Act* equivalent to double the value of the security 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.

In the present case I find that the letter dated January 31, 2017 both provides the tenant's forwarding address and written authorization by the tenant for the landlord to withdraw whatever is necessary for outstanding utility bills.

The tenant testified that they agree with a deduction of \$1,030.00 as the outstanding utilities at the time that the tenancy ended. While I find that it would have been more professional and in line with common courtesy for the landlord to inform the tenant of the amount that was being deducted from the security deposit, I find that the landlord was authorized to withhold the deposit based on the tenant's written authorization. As the tenant agreed to the deduction of up to \$1,030.00 at the hearing, I find that the landlord was authorized to withhold the whole security deposit in the amount of \$825.00.

I find the tenant provided written authorization that the landlord may retain any amount from the security deposit for payment of utilities. If the landlord felt there were additional

moneys owing the onus was on the landlord to file an application for dispute resolution seeking a monetary award.

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 accordance with section 51(1) of the *Act*, a tenant who receives a 2 Month Notice to End Tenancy for Landlord's Use is entitled to receive from the landlord an amount that is the equivalent of one month's rent payable under the tenancy agreement.

I accept the evidence of the parties that the landlord issued a 2 Month Notice dated November 30, 2016 and the tenancy ended on January 31, 2017 in accordance with the Notice. I accept the evidence of the parties that despite the 2 Month Notice being issued the tenant paid the rent in the amount of \$1,500.00 for the final month of the tenancy.

I find that the landlord has failed to abide by the requirements of the *Act* to either allow the tenant to withhold the final month's rent or to issue payment in the amount of the monthly rent.

As such, I find that the tenant is entitled to a monetary award, in accordance with section 51(1) of the *Act*, in the amount of \$1,500.00, the equivalent of one month's rent payable under the tenancy agreement.

As the tenant's application was successful, I order that the tenant may recover \$100.00, a portion of their filing fees for this application.

Conclusion

I issue a monetary award in the tenant's favour in the amount of \$1,600.00 against the landlord.

The tenant is provided with the Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: May 17, 2019

Residential Tenancy Branch