



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNSD FFL MNL-S

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 his security deposit pursuant to section 38;
- a monetary order for an amount equal to double the deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

This hearing also dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. I find the landlord was served with the tenant's application in accordance with the *Act*.

The tenant testified that he did not receive the landlord's Notice of Hearing and Application for Dispute Resolution. The landlord testified that he brought the documents to the address which the tenant provided as his forwarding address. The landlord testified that this address was a commercial building and he gave the documents to employee who placed the documents in the tenant's mail slot. I find that service of a Notice of Hearing and Application for Dispute Resolution by placing the notice in the tenant's mail slot is not an accepted method of service pursuant to section 89 of the *Act*. However, the tenant consented to the hearing of the landlord's application even though it was not served properly. Based upon the tenant's consent, I find that the landlord's Notice of Hearing and Application for Dispute Resolution was sufficiently served pursuant to section 71(2)(b).

Issue(s) to be Decided

Is the tenant entitled to a refund of all or a portion of his security deposit pursuant to section 38?

Is the tenant entitled to a monetary order for an amount equal to double the deposit pursuant to section 38?

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

Is the landlord entitled to a monetary order for damage to the rental unit pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

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

Background and Evidence

The tenant testified that he entered a tenancy agreement with the landlord in December 2017. The tenant testified that he moved in on December 23, 2017 and he paid the landlord a security deposit of ~~\$750.00~~ \$375.00 which the landlord still holds.

The tenant testified that the day after he moved in, he changed his mind and he gave the landlord notice that he was ending the tenancy agreement. The tenant testified that he paid the rent for January 2018.

The landlord testified that the tenant gave notice of his intent to end the tenancy in January 2018 on a date after January 15, 2018. The landlord testified that it was impossible to rent the property to another tenant in February 2018. The landlord testified that he advertised the rental unit on online classified services but he was unable to secure a new tenant until March 1, 2018.

The tenant brought a previous hearing for return of the security deposit. The file number for the previous hearing is referenced on the first page of this decision. In the previous matter, the tenant's request for return of the security deposit was dismissed with leave to reapply because it was held that the tenant had not proved that he had not proved that he had served his forwarding address on the landlord.

However, the decision in the previous hearing stated that the landlord was deemed to have received the tenant's forwarding address five days after the date that decision was issued, being January 2, 2019. Accordingly, the landlord is deemed to have received the tenant's forwarding address on January 7, 2019.

Analysis

I will address each the tenant's and the landlord's applications separately.

Tenant's Application for Return of Security Deposit

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.

In this matter, the landlord is deemed to have received the tenant's forwarding address on January 7, 2019. The landlord had 15 days after the date of his deemed receipt of the tenant's forwarding address, being January 22, 2019, to either return the security deposit or file an application to retain the security deposit. However, the landlord did not file an application for dispute resolution until January 23, 2019 which was after the expiration of the deadline set forth in section 38(1).

Since the landlord did not comply with section 38(1) of the *Act*, the landlord is required to pay the tenant double the amount of the tenant's ~~\$750.00~~ \$375.00 security deposit, being the sum of ~~\$1,500.00~~ \$750.00.

Since the tenant has succeeded in his application, the tenant is granted reimbursement of his filing fee pursuant to section 72 of the *Act*.

Landlord's Application for Damages

The landlord has requested damages for inadequate notice to end the tenancy. Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and

4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The landlord and the tenant have provided conflicting testimony as to when the tenant provided notice of his intention to end the tenancy. The tenant testified that he provided notice immediately after moving into the rental in December 2017 that he intended to end the tenancy agreement. The landlord testified that the tenant provided notice in January 2018 at some date after January 15, 2018. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this claim, it is the landlord that has the burden of proof.

However, in this case the landlord has provided no documentary evidence to corroborate his contention that the tenant gave notice to end the tenancy late January 2018. I find that the landlord has not provided sufficient evidence to satisfy his burden of proving that the tenant gave him inadequate notice of his intention to end the tenancy.

In addition, the landlord has failed to provide any evidence of his attempts to mitigate the loss of rent by attempting to find another tenant. Although the landlord has testified that he attempted to market the vacant rental unit, the landlord did not provide any documentary evidence to corroborate this claim. Accordingly, I find that the landlord has not provided sufficient evidence to satisfy his burden of proving that he made reasonable efforts to mitigate any losses.

For the forgoing reasons, I dismiss the landlord's application for damages for tenant's early termination of the tenancy agreement. Since the landlord has not succeeded in his application, I dismiss the landlord's application for reimbursement of his filing fee pursuant to section 72 of the *Act*.

Conclusion

I grant the tenant's application for an award equal to double the amount of the tenant's security deposit, being the sum of ~~\$1,500.00~~ \$750.00.

I grant the tenant's application for reimbursement of his filing fee.

I dismiss the landlord's application for damages for tenant's early termination of the tenancy agreement.

I dismiss the landlord's application for reimbursement of his filing fee.

I grant the tenant a monetary order in the amount of ~~\$1,600.00~~ \$850.00. If the landlord fails 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: May 16, 2019

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A) OF THE RESIDENTIAL TENANCY ACT ON JUNE 10, 2019 AT THE PLACES INDICATED BY STRIKETHROUGHS AND UNDERLINES.

Residential Tenancy Branch