



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 all or a portion of her security deposit pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application 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. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an order to obtain a return of all or a portion of her security deposit pursuant to section 38?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

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

Background and Evidence

The parties both agreed that the tenant paid a \$300.000 security deposit which the landlord still holds. The parties also agreed that the tenant moved out of the rental unit late December 2018. The tenant testified that he moved out because the rental unit was infected with bed bugs.

The landlord testified that she did not request a condition inspection report on move out and the condition inspection was not performed.

The parties both testified that they had an agreement wherein the landlord agreed to compensate the tenant in the amount of \$100.00 because the tenant vacated the rental unit one week before the end of the month.

The landlord sent the tenant an email on February 17, 2019 stating that that she was retaining \$200.00 from the security deposit because the bathroom and the kitchen fridge were messy. The landlord sent the tenant an etransfer for \$200.00 but the tenant rejected the transfer.

Analysis

The landlord as has requested compensation in the amount of \$100.00 for vacating the tenancy one week early. I find that the parties agreed that the tenant was entitled to this compensation. Since the parties agreed to this compensation, I order that the landlord pay the tenant compensation in the amount of \$100.00 for vacating the rental unit early pursuant to section 67 of the *Act*.

In regards to the tenant's claim for a return of the security deposit, section 38(1) of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 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

Where a tenant seeks the return of the security deposit, the tenant bears the burden to prove when and how a written forwarding address was given to the landlord since a landlord is not required to take action with respect to the security deposit unless a written forwarding address is received from the tenant.

In this case, the landlord and the tenant both testified that the tenant has not provided the landlord with his forwarding address. Although the tenant testified that the landlord had his email address and his telephone number, the tenant admitted that he had not provided his forwarding address. As such, I find that the tenant has not provided the landlord his forwarding address and this application for return of the deposit is premature.

However, the tenant's Application for Dispute Resolution, which forms part of the Notice of Dispute Resolution Proceeding for this hearing, contains a written "Address for Service of Documents" for the tenant. The landlord confirmed receipt of the Notice for this hearing was served to her by the tenant.

Accordingly, I deem that the landlord is now in receipt of a written forwarding address for the tenant as provided in the tenant's Application for Dispute Resolution for this hearing. This finding triggers the landlord to take one of the following actions under section 38(1) of the *Act* as follows:

- (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.

As such, I find the tenant's Application to recover the security deposit is premature and the landlord may still address the tenant's security deposit in accordance with the above-noted provisions of section 38 of the *Act*.

To clarify, this means that the landlord has 15 days from the deemed receipt date of this decision to address the tenant's security deposit in accordance with section 38 of the *Act*. The deemed receipt date of this decision is five days from the date of this decision. The date of this decision is noted in the Conclusion section of this decision. Should the landlord fail to address the security deposit within that timeline, the tenant will be at liberty to reapply for dispute resolution to claim double the amount of the security deposit pursuant to section 38(6) of the *Act*.

Since the tenant has partially succeeded in this matter, I grant the tenant reimbursement of one-half of the filing fee, being \$50.00.

Accordingly, I grant the tenant a monetary order of \$150.00, calculated as follows:

<u>Item</u>	<u>Amount</u>
Compensation for vacation early	\$100.00
Partial filing fee reimbursement	\$50.00
Total	\$150.00

Conclusion

I grant the tenant a monetary order in the amount of **\$150.00**. 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.

I dismiss the tenant's application with leave to reapply to request the return of the security deposit, should the landlord fail to address the security deposit in accordance with 38 of the *Act*, within 15 days of the deemed receipt date of this decision.

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: June 07, 2019

Residential Tenancy Branch