



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on April 16, 2019, (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit; and
- a monetary order for compensation.

The Tenant, the Tenant's Advocate, E.N., as well as the Landlord attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenant testified that she served her Application and documentary evidence package to the Landlord by registered mail on April 29, 2019. The Landlord confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Preliminary Matters

The Landlord stated that he did not serve copy of his evidence to the Tenant in preparation for this hearing. Section 88 of the *Act* stipulates that documents such as evidence must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator

According to the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”), 3.16 Respondent’s proof of service indicates; at the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing. I accept that the Tenant did not receive the evidence; therefore the only evidence I will consider from the Landlord is their oral testimony during the hearing.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit, pursuant to Section 38 and 72 of the *Act*?

2. Is the Tenant entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?

Background and Evidence

The parties testified and agreed that the tenancy began on January 1, 2017. The Tenant paid rent in the amount of \$1,300.00 to the Landlord which was due on the first day of each month. The Tenant paid a security deposit in the amount of \$650.00 which the Landlord continues to hold. The tenancy ended on January 31, 2019.

The Tenant is claiming for monetary compensation in the amount of \$200.00. The Tenant stated that the Landlord cashed her February 2019 rent cheque in the amount of \$1,300.00, despite the fact that the tenancy ended on January 31, 2019. The Tenant stated that the Landlord retained \$200.00 from the cheque and returned \$1,100.00 in cash to the Tenant. The Tenant stated that she was forced into agreeing to the deduction of \$200.00 for cleaning, in order for the Landlord to return the remaining balance of \$1,100.00 to the Tenant.

In response, the Landlord stated that he attempted to return the February 2019 rent cheque to the Tenant near the end of her tenancy; however, the Landlord stated that the Tenant asked him to cash the cheque as it was addressed to the Landlord, and that she needed the money quickly to pay rent at her new residence. The Landlord stated that he agreed to cash the cheque and provided the Tenant with an envelope which contained the full \$1,300.00 in cash. The Landlord stated that the Tenant then gave him \$200.00 which the parties had agreed to for cleaning.

The Tenant testified that the Landlord has not yet returned her security deposit in the amount of \$650.00. The Tenant stated that the parties did not complete a condition inspection report at the start or at the end of the tenancy. The Tenant stated that she has not yet provided the Landlord with her forwarding address in writing. The Tenant stated that she is seeking a monetary award in the amount of double her security deposit as the Landlord has not returned her deposit in full within 15 days from the end of her tenancy.

In response, the Landlord confirmed that he has not yet received the Tenant's forwarding address and that he has not been able to contact her by phone. The Landlord stated that the parties did complete a condition inspection report at the start and at the end of the tenancy. The Landlord stated that he feels as though he is entitled to retain the Tenant's security deposit as the Tenant did not provide sufficient notice to

end her tenancy. Furthermore, the Landlord stated that the rental unit required further cleaning at the end of the tenancy.

Analysis

Based on the documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

In this case, the Tenant is seeking monetary compensation in the amount of \$200.00. The Tenant stated that the Landlord cashed her February 2019 rent cheque in the amount of \$1,300.00, despite the fact that the tenancy ended on January 31, 2019. The Tenant stated that the Landlord retained \$200.00 from the cheque and returned \$1,100.00 in cash to the Tenant. The Tenant stated that she was forced into agreeing to the deduction of \$200.00 for cleaning, in order for the Landlord to return the remaining balance of \$1,100.00 to the Tenant.

The Landlord stated that the Tenant asked him to cash the cheque as it was addressed to the Landlord, and that she needed the money quickly to pay rent at her new residence. The Landlord stated that he agreed to cash the cheque and provided the Tenant with an envelope which contained the full \$1,300.00 in cash. The Landlord stated that the Tenant then gave him \$200.00 which the parties had agreed to for cleaning.

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 the case before me, I find the Tenant has failed to provide sufficient evidence that she was forced into agreeing that the Landlord can retain \$200.00. In light of the above; I dismiss this portion of the Tenant's claim without leave to reapply.

The Tenant is also claiming for the return of double her security deposit in the amount of \$1,300.00 as the Landlord has not return it to her within 15 days from the end of the tenancy.

Section 38(1) of the Act requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the Act, and does not have authority under sections 38(3) or 38(4) of the Act to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, the parties agreed that the Tenant vacated the rental unit on January 31, 2019. The parties agreed that the Tenant has not yet provided the Landlord with her forwarding address in writing. As both parties were present during the hearing, the Tenant's forwarding address was confirmed during the hearing. I informed the Landlord that he had 15 days from the date of the hearing, August 9, 2019, to either return the security deposit to the Tenant in full, or deal with the security deposit in accordance with the Act.

Conclusion

The Tenant's Application for monetary compensation is dismissed without leave to reapply.

The Tenant's forwarding address was confirmed during the hearing, and the Landlord was informed that he had 15 days from the date of the hearing, until August 9, 2019 to either return the security deposit to the Tenant in full, or deal with the security deposit in accordance with the *Act*.

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: July 26, 2019

Residential Tenancy Branch