



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:

- return of the 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 a return of the security deposit pursuant to section 38?

Is the tenant 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 had a fixed term tenancy for twelve months starting on June 1, 2019. The monthly rent was \$2,100.00 and the tenant paid a security deposit of \$2,100.00. The tenant also prepaid \$1,080.00 for one year of internet access.

In October 2018, the tenant agreed to move out because the landlord was trying to sell the property. The tenant and the landlord entered a written agreement on October 29, 2018 with the following terms:

- (1) the tenant would move out of the rental unit;
- (2) the landlord would provide the tenant with \$1,000.00 compensation for moving out;
- (3) the landlord would return the \$2,100.00 security deposit if the property was not damaged; and,
- (4) the landlord would reimburse the tenant \$540.00 for the unused prepaid internet charges.

The tenant moved out of the rental unit. Both parties agreed that the tenant did not damage the rental unit.

The landlord sold the rental unit after the tenant moved out but the landlord did not return the tenant's deposit or pay the promised compensation under the agreement. The landlord acknowledged that he owed the tenant the security deposit and the \$540.00 in internet fees. The landlord testified that he has not paid yet because he does not have the money. The landlord did not feel that the tenant should be compensated \$1,000.00 for moving out early.

Both parties testified that the tenant has not provided the landlord with his forwarding address.

Analysis

Tenant has requested the following relief:

- A monetary award of \$540.00 for the internet fees
- A monetary award of \$1,00.00 for compensation for moving out early
- Return of the \$1,800.00 security deposit
- Recovery of the \$100.00 filing fee

I will address each claim separately.

Internet fees

The parties that the landlord owes the tenant \$540.00 for reimbursement of prepaid internet fees. Pursuant to the agreement of the parties, I grant the tenant a monetary order of \$540.0 for reimbursement of prepaid internet fees.

Moving out compensation

The parties had agreed in writing that the tenant was entitled to \$1,000.00 monetary compensation to move out early. The tenant has upheld his end of the agreement and now the landlord wants to renege on his obligation to pay the \$1,000.00 in compensation. Section 62(3) of the Act authorize an arbitrator to:

...may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Pursuant to section 62(3), I grant the tenant's claim for a monetary order for \$1,000.00 for compensation to give effect to the written agreement between the parties regarding termination of the tenancy.

Security Deposit

The *Act* contains comprehensive provisions for addressing security and/or pet damage deposits at the end of the tenancy. Both the landlord and the tenant have responsibilities under section 38 of the *Act*.

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, both the tenant and the landlord testified that the tenant had not provided his forwarding address in writing to the landlord.

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 and the landlord confirmed receipt of the Notice for this hearing.

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*.

Filing fee

Since the landlord was partially successful in this application, I grant the tenant on order for recovery of the \$100.00 filing fee pursuant to section 72.

Accordingly, I grant the tenant a monetary order of **\$1,640.00**, calculated as follows:

<u>Item</u>	<u>Amount</u>
Reimbursement for internet fees	\$540.00
Monetary award for moving early	\$1,000.00
Filing fee	\$100.00
Total	\$1,640.00

Conclusion

I grant the tenant a monetary award of **\$1,640.00**.

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: July 29, 2019

Residential Tenancy Branch