



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 15, 2019 (the "Application"). The Tenant applied for return of the security deposit and reimbursement for the filing fee.

The Tenant appeared at the hearing with the Occupant. The Occupant was originally named on the Application; however, the parties agreed the Occupant is not a tenant under the tenancy agreement and therefore I removed the Occupant from the style of cause. The Landlord appeared at the hearing.

The Tenant advised he is seeking double the security deposit back if I find the Landlord failed to comply with the *Residential Tenancy Act* (the "Act").

I explained the hearing process to the parties who did not have questions in this regard. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed receipt of the hearing package and Tenant's evidence. The Tenant testified that he did not receive the Landlord's evidence.

The Landlord testified that she sent her evidence to the Tenant at the address on the Application on October 16, 2019 by registered mail. The Landlord provided Tracking Number 1 and 2.

The Landlord acknowledged receiving the Tenant's materials in July. I asked the Landlord why she sent her evidence so late. The Landlord testified that she was sick.

I was satisfied the Landlord's evidence was sent in accordance with section 88(d) of the *Act*. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the evidence October 21, 2019. This is only six days before the hearing. This does not comply with rule 3.15 of the Rules of Procedure in relation to the timing of service. Given this, and given the Tenant had not received the evidence, I heard the parties on whether the evidence should be admitted or excluded.

I exclude the Landlord's evidence. In the absence of further compelling evidence to support the Landlord's testimony that the evidence could not be served sooner, I do not accept that the Landlord could not have complied with the Rules in relation to the timing of service. The Landlord had more than two months to send her evidence to the Tenant. I find this to be more than adequate in the absence of further evidence showing otherwise. The Landlord did not comply with the Rules. The Tenant had not received the evidence. I find it would be prejudicial to the Tenant to admit evidence that he has not viewed when the Landlord failed to comply with the Rules in relation to service.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the admissible documentary evidence and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed on the following. There was a written tenancy agreement in this matter. The tenancy started in 2017. The Tenant paid a \$700.00 security deposit.

The parties agreed the tenancy ended June 30, 2019. The Landlord acknowledged that she still holds the entire security deposit.

The parties agreed the Tenant provided his forwarding address to the Landlord by email July 15, 2019. The Landlord did not take issue with the form of the forwarding address. The email was submitted.

The parties agreed on the following. The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep the security deposit.

The Landlord testified that she did not apply to the RTB to keep the security deposit.

The parties agreed a move-in inspection was done.

The Landlord testified that she arrived to do the move-out inspection, the Tenant was in a hurry to catch the ferry and left. The Landlord testified that she did not follow up with the Tenant and provide an opportunity on the RTB form to do the move-out inspection.

The Tenant did not agree with the Landlord about the move-out inspection. He testified that the parties did go through the rental unit and do an inspection. The Tenant testified that no move-out inspection report was done.

Analysis

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

Given the testimony of the parties, I accept the tenancy ended June 30, 2019.

Given the testimony of the parties, I accept the Tenant provided the Landlord with his forwarding address on July 15, 2019. I find this sufficient given the position of the Landlord on this issue.

July 15, 2019 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from July 15, 2019 to repay the deposit in full or file a claim with the RTB claiming against the deposit.

Given the testimony of the Landlord, I find the Landlord did not repay the security deposit or file a claim with the RTB claiming against the deposit by July 30, 2019. Sections 38(2) to 38(4) of the *Act* state:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...

Given the testimony of the parties about the move-in inspection, I find the Tenant did not extinguish his rights in relation to the security deposit under section 24 of the *Act*.

Given the testimony of the Landlord that she did not provide the Tenant an opportunity to do the move-out inspection on the RTB form, I find the Tenant did not extinguish his rights in relation to the security deposit under section 36 of the *Act*.

I find section 38(2) of the *Act* does not apply.

Given the testimony of the parties, I find the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. Section 38(3) of the *Act* does not apply.

Given the testimony of the parties, I find the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep the security deposit. Section 38(4) of the *Act* does not apply.

Given the above, I find the Landlord failed to comply with section 38(1) of the *Act* and that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply.

Therefore, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenant pursuant to section 38(6) of the *Act*.

The Landlord must return \$1,400.00 to the Tenant. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

As the Tenant was successful in this application, I award him reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$1,500.00. I issue the Tenant a monetary order for this amount.

Conclusion

The Tenant is entitled to \$1,500.00 and I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the Order may be filed in the Small Claims division of the Provincial Court and 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 *Act*.

Dated: October 31, 2019

Residential Tenancy Branch