



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 compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

The tenant attended the hearing. The tenant had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The landlord did not attend the hearing. I kept the teleconference line open from the scheduled hearing time for fifteen minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct participant code was provided to the landlord.

The tenant testified the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on July 23, 2019 and deemed received by the landlord five days later, on July 28, 2019, under section 90 of the *Act*. The tenant provided the Canada Post tracking number in support of service referenced on the first page of the decision. Based on the undisputed testimony of the tenant, I find the tenant served the landlord with the documents pursuant to section 89 of the *Act*. Further, since the landlord submitted evidence for the hearing, I find that the landlord was sufficiently served pursuant to section 71(2)(c) of the *Act*.

Preliminary Matter: Service of Landlord's Evidence

The tenant testified that she did not receive a copy of the landlord's evidence prior to the hearing. The *Residential Tenancy Branch Rules of Procedure*, Rule No. 3.15 establishes that the respondent's evidence intended to be relied on at the hearing must be received by the applicant not less than seven days before the hearing. Based upon the tenant's undisputed testimony, and the absence of any evidence from the landlord to prove the service of his evidence, I am not satisfied that the landlord served their evidence in accordance with the *Residential Tenancy Branch Rules of Procedure* stated above.

Residential Tenancy Branch Rules of Procedure, Rule No. 3.12 states that evidence that was not served properly may be excluded if the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice. In this matter, I find that the acceptance of the respondent's evidence without being served on the applicant would prejudice the tenant and breach the principles of natural justice.

Accordingly, I exclude all of the landlord's evidence. The landlord's evidence will not be considered in my rendering of this decision.

Issue(s) to be Decided

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

Is the tenant entitled to a monetary order for 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 tenant testified that she signed a tenancy agreement with the landlord with a monthly rent of \$1,200.00 plus 40% of utilities with the tenancy starting on July 1, 2019. The tenancy agreement stated a \$600.00 security deposit and a \$400.00 utility deposit. The tenant paid the landlord \$2,200.00 on June 8, 2019.

The tenant testified that this money was for the following:

- \$1,200.00 for July 2019 rent
- \$600.00 security deposit
- \$400.00 utility deposit

The tenant noticed the presence of mold in the rental unit in June 2019. The tenant testified that she met with an individual representing the landlord in June 2019 to discuss the condition of the rental unit. The tenant testified that the individual told the tenant that if she was unhappy with the rental unit, she could cancel the tenancy and get of her money back. The tenant testified that she told the individual that she did wish to cancel the tenancy and the tenant surrendered her keys to the rental unit in June 2019. The tenant testified that she was advised by the landlord on June 27, 2019 that the locks had been changed.

The tenant testified that she provided her address in writing to the landlord on June 28, 2019. The landlord provided a cheque for \$600.00. The tenant testified that this cheque was sent by mail and the envelope was post-marked July 24, 2019. The tenant has not attempted to deposit this cheque.

Analysis

I find that the tenancy ended pursuant to section 44(1)(d) of the *Act* when the tenant vacated the rental unit by surrendering her keys in June 2019 and by the landlord changing the locks. Further, I find that the landlord has not presented any basis as to why the tenant should be liable for the payment of the July 2019 rent after the termination of the tenancy agreement. While the landlord may exert a claim for damages for insufficient notice to ending the tenancy, the landlord has not filed such an application. Accordingly, I find that the tenant has established that the landlord did not have a right to retain the July 2019 rent after the end of tenancy agreement and, as such, I find that the tenant is entitled to a return of the \$1,200.00 paid for July 2019 rent pursuant to section 67 of the *Act*.

The tenant also seeks a return of her deposits. The *Act* defines a security deposit as follows:

"security deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property...

As such, I find that both the \$600.00 security deposit and the \$400.00 utility deposits are security deposits within the meaning of the Act. Accordingly, I find that the tenant provided a security deposit of \$1,000.00.

Section 38 of the *Act* states that:

- 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.

Based on the testimony of the tenant, I find that the tenancy ended on June 27, 2019 when the landlord changed the locks.

On the basis of the undisputed testimony of the tenant, I find that the tenant provided the landlord with their forwarding address by registered mail on June 28, 2019.

The landlord had 15 days after the end of the tenancy and the delivery the tenants' forwarding address to repay the full deposit or file an application for dispute resolution pursuant to section 38(1) of the *Act*. Since the tenant provided her forwarding address on June 28, 2019, the landlord's deadline to repay the deposit or file an application for dispute resolution was July 13, 2019.

I find that the landlord did not perform either of these requirements by the July 13, 2019. I find that the landlord did send a partial refund of the security deposit in the amount of \$600.00 on July 24, 2019. However, the landlord was required to return the entire security deposit by the July 13, 2019 deadline. By only providing a partial return of the security deposit, I find that the landlord is in violation of section 38(1) of the *Act*.

According to section 38(6) of the *Act*, if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit. Since I have determined that the landlord has violated section 38(1) of the *Act*, I find that the landlord must pay the tenant double the amount of the security deposit.

In addition, since the tenant has been successful this matter, I award the tenant \$100.00 for recovery of the filing fee pursuant to section 72.

The total award to tenants is accordingly \$3,300.00 as set forth below:

Item	Amount
Refund of July 2019 rent	\$1,200.00
Recovery of double the security deposit (\$1,000.00 times 2)	\$2,000.00
Filing recovered by tenant	\$100.00
Total award to tenant	\$3,300.00

Accordingly, I order the landlord to pay the tenant the sum of \$3,300.00. If the tenant successfully deposits the cheque received in the amount of \$600.00, that amount shall be credited against the amount owed by the landlord herein.

Conclusion

The landlord's right to retain the security deposit is extinguished.

I grant the tenants reimbursement of the filing fee.

I grant the tenant a monetary order in the amount of **\$3,300.00**. If the landlord fails to comply with this order, the tenants may file the order in the Provincial Court to be enforced as an order of that court.

If the tenant successfully deposits the cheque received in the amount of \$600.00, that amount shall be credited against the amount owed by the landlord herein.

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: October 31, 2019

Residential Tenancy Branch