



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- the return of the security deposit pursuant to section 38 of the *Act*;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord's agent S.K. attended on behalf of the landlord and is herein referred to as "the landlord".

As both parties were present, service of documents was confirmed. The tenant testified that the landlord was served with the Notice of Dispute Resolution by Canada Post registered mail, which was confirmed received by the landlord. Based on the undisputed testimonies of the parties, I find that the landlord was served with the notice of this hearing in accordance with section 89 of the *Act*.

Neither party confirmed receipt of the other party's documentary evidence, and as such I have not considered any documentary evidence of either party in this matter. I have only considered the verbal testimony provided in the hearing.

Preliminary Issue – Amendment to Tenant's Application for Dispute Resolution

The tenant failed to submit her evidence related to her claim for compensation for damage or loss against the landlord unrelated to the security deposit. As such, during the hearing, the tenant confirmed that she wished to withdraw her claim for compensation and only proceed with her claim for the return of the security deposit. As the tenant's request was not prejudicial to the landlord, pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenant's Application to withdraw the tenant's claim for compensation for damage or loss. Therefore, the tenant is at liberty to reapply for this claim within the time limits of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit? If so, is the tenant entitled to a monetary award equivalent to the value of the security deposit because of the landlord's failure to comply with section 38 of the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

No written tenancy agreement was submitted into evidence by either party. The parties confirmed the following information pertaining to the tenancy agreement:

- This month-to-month tenancy began on June 1, 2016.
- Monthly rent of \$950.00 was payable on the first day of the month.
- The tenant paid a security deposit of \$450.00 at the beginning of the tenancy, which the landlord continues to hold.
- The tenancy ended on June 19, 2019 when the tenant vacated the rental unit of all her belongings and returned the key to the landlord.
- The landlord confirmed receipt of the tenant's forwarding address in writing on June 19, 2019.
- The tenant did not provide written authorization to the landlord for any deductions from the security deposit.
- The landlord did not return the security deposit to the tenant and the landlord did not file an application for dispute resolution to retain the security deposit.

Analysis

The *Act* contains comprehensive provisions on dealing with security deposits. Under section 38 of the *Act*, the landlord is required to handle the security deposit as follows:

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.

...

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

At no time does the landlord have the ability to simply keep all or a portion of the security deposit because they feel they are entitled to it due to damages caused by the tenant. If the landlord and the tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

In this matter, the tenancy ended on June 19, 2019, and the parties agreed that the landlord was in receipt of the tenant's forwarding address in writing as of that date.

Therefore, the landlord had 15 days from June 19, 2019 to address the security deposit in accordance with the *Act*.

The landlord confirmed that the security deposit was not returned to the tenant and no application for arbitration had been filed within 15 days of the receipt of the tenant's

forwarding address, to retain all or a portion of the security deposit, as required under section 38 of the *Act*.

It was confirmed by both parties that the tenant did not provide the landlord with any authorization, in writing, for the landlord to retain any portion of the security deposit.

The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an Arbitrator, or with the written agreement of the tenant. In this matter, I find that the landlord did not have any authority under the *Act* to keep any portion of the security deposit.

I note that the landlord provided verbal testimony about claims that the tenant failed to provide adequate notice to end the tenancy; however, the landlord is unable to make a monetary claim through the tenant's Application.

The landlord may still file his own Application for compensation for the alleged loss caused by the tenant; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

Based on the above legislative provisions and the testimony of both parties, on a balance of probabilities, I find that the landlord failed to address the security deposit in compliance with the *Act*. As such, in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a monetary award equivalent to the value of double the amount of the \$450.00 security deposit withheld by the landlord, with any interest calculated on the original amount only. No interest is payable for this period.

Therefore, the tenant is entitled to a monetary award of \$900.00 as statutory compensation for the landlord's failure to address the security deposit in accordance with section 38 of the *Act*.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$900.00 pursuant to sections 38 and 67 of the *Act*.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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 *Residential Tenancy Act*.

Dated: November 04, 2019

Residential Tenancy Branch