



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord, the landlord's mother and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were in attendance, I confirmed that there were no issues with service of the tenant's application for dispute resolution and evidence. I find that the landlord was duly served with the tenant's application and evidence, in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed that this tenancy began on August 20, 2018. The tenant testified that this tenancy ended on July 2, 2019. The landlord testified that this tenancy ended on or around July 10, 2019.

Both parties agree to the following facts. Monthly rent in the amount of \$2,100.00 was payable on the 20th day of each month. A security deposit of \$1,050.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a portion of the tenancy agreement was entered into evidence.

The tenant testified that she sent the landlord her forwarding address via registered mail on July 9, 2019. A Canada Post registered mail receipt evidencing same was entered into evidence. The landlord testified that she received the tenant's forwarding address in writing but could not recall on what date. Both parties agree that the landlord did not return any of the tenant's security deposit.

The landlord testified that in an email dated June 28, 2019 the tenant agreed that the landlord was permitted to retain \$200.00 of the tenant's security deposit. The June 28, 2019 email was not entered into evidence. The tenant testified that she did not provide the landlord with written authorization to retain any portion of her security deposit.

The landlord testified that she did not file an application with the Residential Tenancy Branch to retain any portion of the tenant's security deposit. The landlord testified that she did not return the tenant's security deposit because the tenant incurred a \$200.00 strata fine during her tenancy and because the tenant damaged the fridge door which required replacement. A receipt for same was entered into evidence.

Analysis

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award,

pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that the landlord has not proved, on a balance of probabilities, that the tenant agreed in writing for the landlord to retain any portion of her security deposit as no evidence to support the landlord's testimony was entered into evidence.

Section C(3) of Residential Tenancy Branch Policy Guideline 17 states that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing.

Based on the testimony of both parties and the Canada Post receipt entered into evidence, I find that the landlord was deemed served with the tenant's forwarding address in writing on July 14, 2019, five days after it's registered mailing, in accordance with sections 88 and 90 of the *Act*.

Based on the evidence of both parties, I find that the landlord did not return the tenant's security deposit within 15 days of the landlord's receipt of the forwarding address in writing. Based on the landlord's testimony, I find that the landlord did not file an application with the Residential Tenancy Branch to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address in writing. Therefore, pursuant to section 38 of the *Act* and Residential Tenancy Branch Policy Guideline 17, the tenant is entitled to receive double her security deposit in the amount of \$2,100.00.

As the tenant was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$2,200.00

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 14, 2019

Residential Tenancy Branch