



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDL-S (landlord) FFL MNDL-S (tenant)**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

PW and DA attended (“the landlords”). The tenant attended and called the witness, her mother, CB. The landlords acknowledged service of the Notice of Hearing and Application for Dispute Resolution. I find that the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution under section 89 of the *Act*.

Preliminary Issue - Service

The tenant denied receipt of the landlord’s Notice of Hearing and Application for Dispute Resolution. The landlords testified they sent the documents to the tenant by regular mail.

The landlord submitted no evidence to support a finding the tenant had been served with the Notice of Hearing and Application for Dispute Resolution pursuant to section 89 which states:

89 (1) An application for dispute resolution ... must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Therefore, I find the landlords have failed to prove service as required and I dismiss their application with leave to reapply.

I informed the parties of the provisions of section 38 of the *Act* which require that the security deposit is doubled if the landlord does not return the security deposit to the tenant within 15 days of the later of the end of the tenancy or the provision of the tenant's forwarding address in writing.

Issue(s) to be Decided

Is the tenant entitled to:

- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee.

Background and Evidence

The parties agreed that the tenancy began in 2013 and ended when the tenant vacated on July 31, 2019. Rent was \$1,551.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$725.00 which the landlords hold. The tenant has not provided the landlords with authorization to retain the security deposit.

There was no condition inspection on moving in or moving out.

The tenant testified that she provided her forwarding address to the landlords in writing on the last day of the tenancy, July 31, 2019 after a “walk-through”. The tenant testified that she was accompanied by her mother, CB, who was called as a witness and confirmed the tenant’s testimony. They both testified that no damages were found by the landlords.

The tenant testified as follows, supported by the witness CB’s testimony. After the walk-through, the tenant asked the female landlord when she, the tenant, would get her security deposit back. The female landlord handed the tenant her phone and the tenant typed in the tenant’s forwarding address. The tenant and her mother testified that the male landlord was not present when this occurred as he was busy elsewhere inspecting a plumbing leak.

The female landlord “vehemently” denied this version of events and stated that she did not receive the tenant’s forwarding address at that time. She claimed she would “never” hand her phone to anyone.

The male landlord also denied the tenant’s version of events and stated he was present during the meeting after the walk-through, and no address was provided as claimed by the tenant and her witness.

The tenant testified she sent an unanswered text to the landlords on August 16, 2019 asking for the return of the security deposit. The female landlord acknowledged receipt of the text and stated she did not reply.

The tenant testified that she sent an email to the landlords on August 17, 2019 with the same request. The female landlord acknowledged receipt of the email. She testified the landlords were waiting for estimates before bringing an application for damages or dealing with the security deposit.

The landlord acknowledged a subsequent note taped to the landlords' door on August 22, 2019 which the tenant testified contained her forwarding address. The female landlord stated that the landlords learned of the tenant's forwarding address only when the evidence package was served. This contradiction was not fully explained during the hearing.

The tenant brought this application on August 22, 2019 and the landlord brought an application for compensation and damages on September 1, 2019.

The tenant requested a doubling of the security deposit as a result of the landlords' failure to return the deposit within 15 days of July 31, 2019, the last day of the tenancy and the date on which the tenant claimed to have provided the female landlord with her forwarding address. The tenant's claim is:

ITEM	AMOUNT
Security deposit	\$725.00
Double the Security Deposit	\$725.00
Reimbursement of the Filing Fee	\$100.00
TOTAL CLAIM	\$1,550.00

The landlords deny that the tenant is entitled to a doubling under the Act.

Analysis

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

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the *Act*, the landlord is required 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 the end of a tenancy and receipt of the tenant's forwarding address in writing.

Section 38 states 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.

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit.

Section 38(6) states as follows:

(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

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

In determining whether the tenant provided her forwarding address in writing on July 31, 2019 by entering the address in the landlord's phone, I have considered the evidence of the tenant and her witness and weighed this against the competing testimony of the landlords.

I found both the tenant and her witness to be direct, credible and convincing. I find their version of events to be the most likely; I accept their evidence that only the female landlord was present at the time in the post walk-through meeting when the tenant provided her address. I give considerable weight to the testimony of the tenant and her witness that the tenant entered the forwarding address on the female landlord's phone.

I also find the tenant's story to be more believable; that is, that she expected the return of the security deposit as she had provided her forwarding address on July 31, 2019 and reminded the landlords of this by text, email and a posted notice.

I am confused by the landlords' assertion that they did not receive the tenant's address until they were served with documents for this Application, while acknowledging the note posted to their door a week or so earlier. This confusion and uncertainty in their testimony leads me to give less weight to their testimony. I give greater weight to the tenant's testimony as supported by the witness CB.

I find the tenant has met the burden of proof on a balance of probabilities that she provided her forwarding address in writing pursuant to section 38(1)(b) at the end of the tenancy on July 31, 2019.

I find the tenant did not provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a).

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required.

I find the tenant is entitled to a doubling of the security deposit. Accordingly, I grant the tenant a monetary award in the amount as claimed.

As the tenant was successful in their application, I further grant the tenant reimbursement of the filing fee.

My award to the tenant is summarized as follows:

ITEM	AMOUNT
Security deposit	\$725.00
Double the Security Deposit	\$725.00
Reimbursement of the Filing Fee	\$100.00
TOTAL CLAIM	\$1,550.00

The landlord may still file an application for alleged damages. However, the landlord is unable to make a monetary claim through the tenant's application pursuant to Rules of Procedures 2.1 which states as follows:

2.1 Starting an Application for Dispute Resolution

To make a claim, a person must complete and submit an Application for Dispute Resolution.

Therefore, the landlord must file their own application to keep the deposit within the 15 days of certain events, as explained above.

However, the issue of the security deposit has now been conclusively dealt with in this hearing.

Conclusion

I order the landlord pay to the tenant the sum of **\$1,550.00**.

The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this 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 *Residential Tenancy Act*.

Dated: December 17, 2019

Residential Tenancy Branch