



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFT MNDCT MNSD RPP

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- A return of the deposit paid for this tenancy pursuant to section 33;
- A return of personal property pursuant to section 65; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenant's application and evidence. Based on the testimony I find that the landlord was served with the tenant's materials in accordance with sections 88 and 89 of the Act.

The tenant disputed receiving the landlord's evidence. The landlord testified that they had served the tenant by registered mail and provided a valid Canada Post tracking number as evidence of service. The landlord's evidence consists of photographs of the suite and some invoices for the cost of repairs. As I find that the inclusion of this documentary evidence does not unfairly prejudice the tenant and the landlord has provided evidence that they had attempted to serve the materials, I allow its inclusion pursuant to Residential Tenancy Rule of Procedure 3.17 and find the materials were sufficiently served in accordance with section 71, 88, and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?
Is the tenant entitled to a return of the deposit?
Is the tenant entitled to a return of any personal property?
Is the tenant entitled to a return of the fling fee from the landlord?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in 2015. A security deposit of \$375.00 was paid and is still held by the landlord. While a receipt showing the amount of the deposit to be \$350.00 was submitted into evidence by the landlord both parties confirmed on several instances during the hearing that the amount of the deposit was \$375.00. No condition inspection report was prepared for this tenancy.

The tenancy ended on September 30, 2018. The tenant provided the landlord with a forwarding address in a letter dated October 4, 2018. The tenant did not give authorization that the landlord may retain any portion of the deposit. The tenant now seeks a return of double the amount of the deposit for this tenancy.

The landlord submits that the rental unit required some cleaning, repairs and work after the tenant vacated. The landlord submitted some photographs of the suite and invoices for work.

The tenant submits that the landlord disposed of a bicycle without authorization. The tenant seeks a monetary award of \$150.00 for the value of the bicycle. The tenant provided no documentary evidence in support of the existence or value of a bicycle.

Analysis

Section 38 of the *Act* requires the landlord 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 or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must 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 permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the evidence of the parties that this tenancy ended on September 30, 2018 and the tenant gave the landlord the forwarding address in writing by a letter dated October 4, 2018. The landlord did not return the security deposit to the tenant nor did they file an application for dispute resolution for authorization to retain the deposit within the 15 days provided under the *Act*, or at all.

The landlord submits that there was damage in the rental unit but I find this to be irrelevant. The landlord has not filed an application for authorization to recover any cost of repairs from the security deposit. The undisputed evidence of the parties is that the tenant has not authorized the landlord to deduct any portion of the security deposit.

If the landlord had concerns about the condition of the rental unit at the end of the tenancy and sought to recover his losses from the security deposit they ought to have filed an application for dispute resolution in accordance with the *Act*. A landlord cannot simply withhold the security deposit for a tenancy without following the appropriate legislative steps. I find that the landlord has failed to return the security deposit for this tenancy to the tenant without the tenant's authorization or filing an application to claim against the deposit.

Furthermore, the parties gave evidence that no condition inspection report was prepared at any time during the tenancy. Section 36 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$750.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove

the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant claims for the cost of a bicycle but has provided little evidence of its value or even existence. The tenant gave brief testimony that they believe the bicycle was disposed of by the landlord. The landlord refuted and said they have not disposed of any bicycle. Based on the minimal information provided I find there is insufficient evidence in support of a monetary claim for the value of a bicycle. I dismiss this portion of the tenant's application.

As the tenant was partially successful in their application I find it appropriate that they recover \$50.00, a portion of their filing fee.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$800.00. 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: December 30, 2019

Residential Tenancy Branch