



Dispute Resolution Services

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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
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties CP and KL 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*.

Preliminary Matter

At the outset of the hearing, there was a technical issue with the tele-conference system. The parties were disconnected once and had to call back into the hearing.

Issues

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 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 in August 2018. The tenant testified that the tenancy ended on December 31, 2018.

Both parties agree to the following facts. Monthly rent in the amount of \$1,600.00 was payable each month. A security deposit of \$800.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties. No copy of the tenancy agreement was entered into evidence.

The tenant and landlord also agreed that no move-in or move-out inspections were conducted due to their friendship.

The tenant testified that she sent the landlord her forwarding address via text and Facebook message on January 2, 2019. The landlord agreed that he 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 he did not file an application for dispute resolution with the Residential Tenancy Branch to retain any portion of the tenant's security deposit. The landlord testified that he did not return the tenant's security deposit because the tenant incurred two hydro bills for the sum of \$327.33 and \$407.00 respectively and there was the issue of garbage and damage to the rental unit.

The landlord testified that the tenant agreed in a text message dated December 31, 2018 that the landlord was permitted to retain \$300.00 for the hydro bill. This text was entered into evidence. The tenant agreed that she provided the landlord with written authorization to retain \$300.00 for the hydro bill.

The landlord testified that he attempted to return a portion of the security deposit for the sum of \$266.00 (deducting the hydro bills) via electronic transfer, but this was rejected by the tenant. The tenant testified that she rejected the transfer because she had already submitted her application for dispute resolution to the Residential Tenancy Branch and was seeking double the amount of security deposit.

The landlord testified that there was damage to the paint on the walls and rental unit. He was advised that as this was the tenant's application for a monetary order for the return of the security deposit that his claim could not be heard in this case. The landlord was informed to contact the Residential Tenancy Board for further advice.

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 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)).

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. I find that the landlord was served with the tenant's forwarding address in writing by text and Facebook messaging on January 1, 2019, a day after the tenant vacated the rental unit.

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 on January 1, 2019.

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.

As the parties testified, the tenant had provided her written authorisation to the landlord to retain the sum of \$300.00 for the hydro bill. I find that the landlord is entitled to deduct this amount from the security deposit.

The tenant paid \$800 as a security deposit. The parties agreed that the landlord retain \$300 towards the payment of the hydro. The tenant is entitled to double the amount that remains after the reduction of the security deposit.

ITEM	AMOUNT
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Security deposit	\$800.00
Hydro (deduction)	(\$300.00)
	= \$500.00
Double the security deposit	
Total Monetary Award	\$1000.00

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 \$1,100.00

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: January 09, 2020

Residential Tenancy Branch