



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$1,250.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the \$100.00 cost of his filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Landlord said he received the Application and the documentary evidence from the Tenant and had reviewed it prior to the hearing. The Landlord did not submit any evidence in this matter.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?

- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on January 15, 2018, with a monthly rent of \$1,250.00, due on the first day of each month. The Parties agreed that the Tenant's fiancée, S.W., a co-tenant, signed the tenancy agreement and paid the Landlord a security deposit of \$625.00, and no pet damage deposit. The Parties agreed that the Tenant provided his forwarding address to the Landlord via registered mail on September 2, 2019. They agreed that the tenancy ended when the Tenant moved out on September 29, 2019.

The Parties agreed that the Tenant's name was on the tenancy agreement; however, the Landlord said that the female tenant, S.W., signed the agreement and paid the security deposit, not the Applicant/Tenant. The Landlord agreed that the Tenant's name was on the tenancy agreement, but he said that "she was the only tenant". The Landlord said that the Applicant was at the rental unit on weekends, but that he was not a tenant.

The Tenant said that S.W. was his fiancée, and that he was working in Edmonton when they moved into the rental unit. The Tenant said that S.W. put his name on the tenancy agreement, as well as hers. He said that he was the "breadwinner" and that he paid for everything. The Tenant said that when things did not work out between the couple, S.W. crossed her name off their copy of the tenancy agreement and moved out.

The Tenant said:

All I'm saying that this is an easy fix. I was the last tenant there. We had an agreement that [the Landlord] would pay me at the end of the agreement. . . . I was waiting in the driveway, but he said he couldn't get there. He said he would honour it that day, but he just didn't show up.

The Landlord said that he could not make it, as he owns a hostel and could not leave at that time. He said: "I was the only one looking after it, and I had customers checking in. I called the RTB and asked her about this. . . they told me to only return it to the tenant who signed the agreement. I wanted to do it right."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 1 of the Act defines “security deposit” as follows:

"security deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property,

[emphasis added]

RTB Policy Guideline #13 (“PG #13”), “Rights and Responsibilities of Co-tenants” defines Co-tenants as follows:

This Guideline clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement. A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

[emphasis added]

Co-tenants have equal rights and obligations under the Act and the tenancy agreement. PG #13 states:

A security deposit or a pet damage deposit is paid in respect of a particular tenancy agreement. Regardless of who paid the deposit, any tenant who is a party to the tenancy agreement to which the deposit applies may agree in writing to allow the landlord to keep all or part of the deposit for unpaid rent or damages, or may apply for arbitration for return of the deposit.

[emphasis added]

When I consider the evidence before me, overall, as well as the above noted definitions and policy guidelines, I find on a balance of probabilities that the Tenant was a tenant in

the rental unit under this tenancy agreement, with all the rights and obligations of any other tenant.

The Tenant provided his forwarding address on September 2, 2019, and the tenancy ended on September 29, 2019. Section 38(1) of the Act states the following:

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.

The Landlord was required to return the \$625.00 security deposit to the Tenant within fifteen days after September 29, 2019, namely by October 14, 2019, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Landlord has provided no evidence that he returned any amount of the security deposit or applied to the RTB to claim against the deposit. Therefore, I find that the Landlord has failed to comply with his obligations under section 38(1) of the Act.

Given the Landlord's failure to comply with section 38(1), and pursuant to section 38(6)(b) of the Act, I find that the Landlord must pay the Tenant double the amount of the security deposit. There is no interest payable on the security deposit.

I, therefore, award the Tenant with \$1,250.00 from the Landlord. Given the Tenant's

success in his Application, I also award him recovery of the \$100.00 Application filing fee. The Tenant is granted a Monetary Order for **\$1,350.00** from the Landlord.

Conclusion

The Tenant is successful in his Application, as the Landlord failed to comply with section 38(1) of the Act. Further, pursuant to section 38(6) of the Act, the Tenant is awarded double the return of the \$625.00 security deposit. The Tenant is also awarded recovery of the \$100.00 Application filing fee for a total Monetary Order of **\$1,350.00**.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$1,350.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 21, 2020

Residential Tenancy Branch