



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act). The tenant applied for a monetary order for a return of his security deposit, doubled, further monetary compensation, and for recovery of the filing fee paid for this application.

The tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the parties confirmed receipt of the other's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

- Whether the tenant is entitled to a monetary order comprised of his security deposit, doubled, and further monetary compensation.
- Whether the tenant is entitled to recover his filing fee.

Background and Evidence

The undisputed evidence was that this tenancy began on June 28, 2019 and ended on or about August 6, 2019, which was the fixed term of the written tenancy agreement. This tenancy agreement was submitted into evidence.

The tenant paid rent for the entire length of the fixed term in the amount of \$3,250.00 and a security deposit of \$1,625.00.

The tenant's monetary claim is \$4,250.00, comprised of his security deposit of \$1,625.00, doubled to \$3,250.00, and \$1,000.00.

Tenant's evidence in support of his application-

The tenant submitted that he provided his forwarding address to the landlord in the original lease application and in various emails after the tenancy ended requesting the return of his security deposit.

The tenant said that the landlord eventually returned his security deposit, but only after he filed this application. The tenant submitted that as the landlord failed to return his security deposit within 15 days, he is entitled to the doubling portion of the Act.

As to his claim for \$1,000.00, the tenant submitted this was damages in terms of time it took him to chase the landlord as he ignored his requests to pay him the security deposit. The tenant said that he had to organize a cleaner. The tenant said that his time was precious and he had spent hours on this issue.

Landlord's response-

The landlord said that he thought he had the right to retain part of the security deposit since the rental unit was not sufficiently cleaned at the end of the tenancy. Upon a call to the RTB, an information officer (IO) informed the landlord this was not the case.

The landlord said he sent the tenant an email on August 20, 2019, asking for his personal forwarding address to mail a cheque. The landlord submitted that the tenant's emails were becoming abusive and was further told by another IO that advised he could cease all communication if the emails and text messages became abusive.

The landlord submitted that he eventually received the tenant's forwarding address in an email, but was informed by an information officer with the RTB that email correspondence was not the proper way for a tenant to send their forwarding address.

The landlord submitted that he had a conversation with another IO, who, after consultation with her manager, suggested that he consider sending the tenant a cheque to one of the two addresses noted on the registered mail received by the tenant with his application as a show of good faith and in an attempt to amicably resolve the matter.

In response to the tenant's claim for \$1,000.00, the landlord said it was not a reasonable claim.

The landlord's relevant evidence included a written statement, a copy of the email request to the tenant for his personal forwarding address, another email to the tenant, communications from IO's with the RTB, a copy of the envelope sending the tenant his security deposit refund, and other emails and text messages between the parties.

Analysis

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

Security deposit, doubled-

Under section 38(1) of the Act, a landlord is required to either repay a tenant's security deposit or to file an application for dispute resolution to retain the deposit within 15 days of the later of receiving the tenant's forwarding address in writing or at the end of a tenancy. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of her security deposit.

Section 88 of the Act provides that documents, the written forwarding address in this case, that are required to be served on another party, the landlord in this case, **must** be given or served in the ways listed in this section of the Act. Email communication is not an approved method of delivery of those documents under the Act. (emphasis added)

The tenant should have served his forwarding address in writing to the landlord in accordance with the Act and allow the landlord the applicable timeline under section 38

of the Act, which is fifteen days, to either return his security deposit in full or file an application claiming towards the security deposit.

I find that the tenant's application was premature when he applied, as he has not submitted evidence that he provided his forwarding address in writing as required.

Despite not having received the tenant's written forwarding address, the undisputed evidence shows the landlord did return the security deposit using the address listed on the tenant's application.

As the tenant now has received his security deposit, I dismiss his claim for its return.

As to the tenant's request for the doubling of his security deposit, I dismiss this part of the application, as he confirmed not providing his written forwarding address in writing to the landlord in a way required by section 88 of the Act.

Claim for \$1,000.00-

Under section 7(1) of the Act, if a landlord or tenant breaches the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the tenant has the burden of proof to substantiate his claim on a balance of probabilities.

The claim itself was vague and therefore, not assessable. Further, the Act does not authorize me to award an applicant for their time spent in processing a claim or communicating with a party.

More importantly, based on the evidence before me, I find that the tenant has submitted insufficient evidence to prove that the landlord breached the Act and his claim fails.

I therefore dismiss the tenant's claim for \$1,000.00.

As the tenant's application is dismissed, I decline to award him recovery of his filing fee.

Conclusion

The tenant's application is dismissed for the reasons set out above.

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 15, 2020

Residential Tenancy Branch