



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT

Introduction

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

- a monetary order for the landlord to return the security deposit, pursuant to section 38 of the Act; and
- a monetary order for compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67 of the Act.

Landlord GG, tenant CM and her advocate JA were present.

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 package and the participants were prepared to proceed. In accordance with sections 88 and 89 of the Act, I find that the landlord was duly served with the tenant's application and evidence package.

All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Issues to be Decided

- Is the tenant entitled to a monetary order for the landlord to return double the security deposit, pursuant to section 38 of the Act?
- Is the tenant entitled to a monetary order for compensation of overpayment of rent, pursuant to section 67 of the Act?

Background and Evidence

While I have turned my mind to the evidence and the testimony of both parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the parties; it is their obligation to present the evidence to substantiate their application.

The tenant testified the tenancy started on February 15, 2019 and ended on August 31, 2019, monthly rent was \$830.00 and a security deposit of \$500.00 was collected at the outset of the tenancy.

The tenant produced a document entitled "rental confirmation". This document, signed by the landlord shows rent was \$830.00 per month and a security deposit of \$500.00 was collected.

The tenant also testified when she moved in the landlord informed her rent would actually be \$850.00 per month. The tenant paid this extra \$20.00 per month in cash during the seven-month tenancy. The tenant paid the extra amount because she was afraid to be evicted if she did not pay it. She is claiming compensation of \$140.00 for overpayment of rent.

The tenant testified she provided the landlord with her forwarding address on September 09, 2019 and she did not authorize the landlord to keep any portion of her security deposit. A copy of the letter containing the forwarding address was produced as evidence. The tenant received \$250.00 and affirmed the landlord currently holds the remaining \$250.00.

A previous Residential Tenancy Branch decision (file number listed on the cover of this decision) was also provided as evidence. The following testimony was recorded in the decision:

The landlord provided the following testimony. No tenancy agreement in writing exists between the landlord and the tenant. The rental unit is one of two side by side basement suites. The landlord and his family lives upstairs. The tenancy began on February 15, 2019. Rent is currently \$850.00 per month, made up as \$830.00 paid by cheque and the additional \$20.00 as cash payments payable on the first day of the month.

The landlord testified he was asking for \$950.00 for rent, however, he agreed to lower the rent to \$850.00 per month. The landlord testified the tenant agreed to this amount.

The rental confirmation document shows rent was \$830.00 because this is how much the Ministry would pay. The tenant agreed to \$850.00 per month yet paid only \$830.00 a month for every month except July and August 2019. In these two months the landlord received \$850 (the Ministry paid \$830.00 by cheque and the tenant paid \$20.00 in cash).

The landlord affirmed that on September 09, 2019 he returned \$250.00 of the \$500.00 security deposit. He explained to the tenant he did not return the remaining amount because the tenant caused damages to the rental unit and he retained \$250.00 as compensation.

Analysis

Return of security deposit

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, pursuant to section 38(4)(a) of the *Act*:

38 Return of security deposit and pet damage deposit

(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.

There is no evidence the landlord has brought an application claiming against the security deposit for any unpaid utilities or damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the tenant's evidence that the tenant gave the landlord written notice of her forwarding address on September 09, 2019 and that the landlord has only returned \$250.00 of the \$500.00 security deposit.

Policy Guideline 17 of the Residential Tenancy Branch also applies to this case:

The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

Under these circumstances and in accordance with sections 38 (6) and Policy Guideline 17, I find that the tenant is entitled to a monetary award of \$750.00.

Over the period of this tenancy, no interest has accrued on the security deposit.

For the purpose of educating the landlord, I note that under section 19(1) of the Act, a landlord is not permitted to accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement, thus the value of the security deposit accepted by the landlord was unlawful.

Compensation for overpayment of rent

The tenant claims she paid \$850.00 per month which was \$20.00 over and above the verbal tenancy agreement for a monthly rent of \$830.00. The landlord claims the tenancy agreement was for \$850.00 yet the tenant only paid this amount for two months. Although the landlord is required by section 26(2) to provide receipts for rent paid in cash, no receipts were entered into evidence.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making

the claim (in this case the tenant) has not met the burden on a balance of probabilities and the claim fails.

The tenant's evidence of the amount of rent in the tenancy agreement is a document created for the purpose of a third party who was issuing rent cheques directly to the landlord. While this document supports her claim that the tenancy agreement was for \$830.00 per month, it does not substantiate how much she actually paid the landlord for rent. To support her claim that she paid \$850.00 per month, she produced the landlord's testimony from a previous hearing in which the landlord testified the monthly rent was \$850.00. This testimony does not substantiate how much the landlord actually received in rent from the tenant.

Based on the amount confirmed to the Ministry and the testimony provided, I find the tenant has succeeded in proving on the balance of probabilities the tenancy agreement was for a monthly rent of \$830.00 and the landlord breached the agreement by requesting an additional \$20.00. The tenant has not proven she overpaid rent for seven months. Based on the testimony of the landlord, I find the tenant overpaid for July and August 2019 only. There is no evidence she overpaid in the previous months.

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Accordingly, I find the tenant is entitled to a monetary award for \$40.00 only.

In summary:

ITEM	AMOUNT \$
Section 38(6) - doubling of security deposit	1,000.00
Minus amount returned by the landlord	250.00

Amount of security deposit to be returned to tenant	750.00
Compensation for rent overpayment	40.00
TOTAL	790.00

Conclusion

I grant the tenant a monetary order pursuant to sections 38 and 67 of the Act, in the amount of \$790.00.

This order must be served on the landlord by the tenant. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) to be 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 17, 2020

Residential Tenancy Branch