



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 07, 2019 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed, return of a security deposit and reimbursement for the filing fee.

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to return of the security deposit?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

This tenancy relates to a room in a house. The Landlord confirmed he does not live in the house.

The Tenant testified as follows in relation to a tenancy agreement in this matter. His friend was moving here from another country. He went to the rental unit address and looked at four rooms the Landlord had for rent. He picked a specific room and provided the Landlord a security deposit of \$300.00 for that room. The Landlord and him agreed on the following. His friend would move in October 01, 2019. The tenancy would be for a fixed term of six months. Rent would be \$600.00 per month. A \$300.00 security deposit would be paid. He paid the \$300.00 security deposit September 25, 2019.

The Tenant further testified as follows. There was no discussion about when rent would be due. A full tenancy agreement was going to be completed when his friend arrived. No written tenancy agreement was completed.

The Tenant confirmed he was and is acting as agent for his friend in relation to this tenancy.

The Landlord agreed with the following. That the Tenant looked at four rooms and chose a specific room. That him and the Tenant agreed the Tenant's friend would move in on or before October 01, 2019. That the tenancy would be for a fixed term of six months. That rent would be \$600.00 per month. That a security deposit of \$300.00 would be paid.

The Landlord agreed the \$300.00 security deposit was paid September 25, 2019. The Landlord testified that the parties agreed rent would be paid October 01, 2019 and thereafter by the first day of each month.

Both parties agreed the Tenant's friend never moved into the rental unit.

The Tenant testified as follows. His friend arrived in the country October 01, 2019. They called the caretaker October 01, 2019 and let him know the friend would not be moving in until October 05, 2019. On October 05, 2019, they called the Landlord and caretaker but got no response. They drove to the rental unit address. The Landlord told them he forgot they had paid for the specific room and had let someone else move into the room. The Landlord told them they could look at other available rooms and they did; however, they did not like them. They told the Landlord they were not interested in

the other rooms and asked for the security deposit back. The Landlord did not respond and so they left the rental unit address.

The Tenant further testified as follows. He asked the Landlord for return of the security deposit by email. The Landlord started offering them other properties, but they did not accept these offers. The Landlord stopped responding to them. He ended up driving to the rental unit address to try and sort the issue out. The Landlord told him to leave the rental unit address. On the Monday, he filed the Application.

The Landlord testified as follows. The friend was supposed to move in October 01, 2019. Rent was due October 01, 2019. Nobody paid October rent by October 01, 2019. Nobody contacted him or the caretaker until October 05, 2019. On October 05, 2019, the Tenant and his friend showed up at the rental unit address without notice. That same day, the caretaker had allowed someone else to take the room. The Landlord talked to this person the next morning and told him to move back to the room downstairs. He called the Tenant and his friend and told the friend he could move in but they said they were not interested and had found another room.

The Landlord testified that the Tenant never provided a forwarding address for return of the security deposit.

The Tenant testified that he provided an email address and sent a text message to the Landlord with his address. The text message was submitted.

The Tenant sent the text message October 07, 2019. The text message provides the Tenant's full name as well as a street number and name.

The Landlord took the position that the forwarding address was not sufficient because the Tenant did not provide his full address and he could not tell where the street was.

The Tenant sought the following compensation:

Description	Hours	Amount
Time spent at Residential Tenancy Branch (Note 1)	2	\$100.00
Time spent driving to and at the house (Note 1)	2	\$100.00
Time spent on mailing and driving (Note 1)	1	\$50.00
Gas for car		\$20.00
Mailing costs (Note 2)		\$30.00

Total		\$300.00
Note 1: Contract for work can be provided to confirm hourly wage rate		
Note 2: Factors in cost of mailing evidence. Receipt for Initial cost incurred in mailing notice of dispute provided below.		

The Tenant testified as follows in relation to the basis for the compensation claim. The Landlord did not respond to him when he tried to call the Landlord to resolve the issues. Given this, they had to drive to the rental unit address. He is seeking the cost for gas. They spent two to three hours at the rental unit address waiting for the Landlord to respond. He is seeking compensation for loss of his time. It took time to file the Application and he is seeking compensation for this time.

I asked the Tenant what the breach of the *Residential Tenancy Act* (the “Act”), regulations or tenancy agreement was. The Tenant said the breach was that the Landlord did not refund the security deposit.

In response to the compensation claim, the Landlord testified as follows. The Tenant had his phone number and could have contacted him. The Tenant and his friend are at fault for the situation because they showed up on October 05, 2019 without notice and not on October 01, 2019 as agreed. The Tenant and his friend should have paid rent by October 01, 2019.

The Tenant agreed nobody paid October rent by October 01, 2019.

The Tenant provided written submissions and text messages between him, the Landlord and another friend of his.

Analysis

Security Deposit

Section 38 of the *Act* sets out the obligations of a landlord in relation to dealing with a security deposit held at the end of a tenancy. Section 38(1) states:

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.

Section 39 of the *Act* states:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

I am not satisfied the Tenant provided a proper forwarding address in writing to the Landlord. An email address is not sufficient as a forwarding address. The forwarding address provided by text does not include a city, province or postal code. Providing a street name and number is not sufficient as a forwarding address. The Tenant was required to provide a full address. Further, the Tenant only provided the street name

and number on October 07, 2019, the same day the Application was filed. The Landlord did not have a chance to either repay the security deposit or file a claim against it before the Application was filed. Lastly, providing a forwarding address on the Application is not sufficient. The forwarding address had to be provided separately prior to the Application being filed.

Given the Landlord has not been provided with a proper forwarding address, section 38(1) of the *Act* has not been triggered.

I told the parties at the hearing that the Application was premature. I confirmed with the Tenant that the address provided on the Application is the forwarding address. I confirmed with the Landlord that he has this address. I told the Landlord he is deemed to have received the forwarding address on February 04, 2020, the date of the hearing. I told the Landlord he had 15 days from the date of the hearing to deal with the security deposit in accordance with the *Act*.

The request for return of the security deposit is premature. I dismiss this request with leave to re-apply. This does not extend any time limits set out in the *Act*. If the Landlord does not deal with the security deposit in accordance with the *Act*, the Tenant can re-apply for return of the security deposit.

Compensation

Section 7 of the *Act* states:

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

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenant as applicant who has the onus to prove the claim.

I understand the Tenant's claim to relate to costs associated with dealing with the security deposit issue. The Tenant stated that this was the basis for the claim. The Tenant was not previously entitled to return of the security deposit as the Tenant had not provided the Landlord a proper forwarding address. Therefore, the Landlord did not breach the *Act*, regulations or tenancy agreement by not returning the security deposit and the Tenant is not entitled to the compensation sought.

I also note that the Tenant is not entitled to compensation for costs associated with obtaining information from the RTB, filing the Application or serving documents on the Landlord as these types of costs are not recoverable in these proceedings.

Filing fee

I decline to award the Tenant reimbursement for the filing fee given the Tenant was not successful on the Application.

Conclusion

The requests for compensation and the filing fee are dismissed without leave to re-apply.

The request for return of the security deposit is dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

The Landlord is deemed to have received the Tenant's forwarding address February 04, 2020, the date of the hearing. The Landlord has 15 days from the date of the hearing to deal with the security deposit in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 05, 2020

Residential Tenancy Branch