



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

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

The landlord did not attend the hearing. Tenant AM (agent for AQ) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she served the Dispute Resolution Proceedings documents by registered post on October 20, 2019. Registered mail tracking information is provided on the coversheet of this decision. 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*. Pursuant to section 90 of the *Act*, I find the landlord is deemed to have received the hearing documents on October 25, 2019 or 5 days after it was sent by registered post.

Rule of Procedure 7.3 states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

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 the tenant, not all details of her respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and my findings are set out below.

The tenant testified that this tenancy began on November 1, 2016 and ended on August 31, 2019. Monthly rent in the amount of \$1,700.00 was payable each month. A security deposit of \$835.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties, and a copy of the tenancy agreement was entered into evidence.

The tenant testified that a move - out inspection was undertaken between herself and the landlord on October 31, 2019. The landlord did not complete a move-out inspection report but wrote items that were damaged on an envelope which the tenant did not produce as evidence.

The tenant testified that the damaged items were a missing baseboard under the window wall and a tile which had a hairline crack" The tenant testified that the landlord advised her that he had similar tiles in his garage and would be able to replace the cracked tile. The tenant testified there was a hole in the flooring and that she purchased new vinyl flooring for the landlord to replace at a cost of \$850.00.

The tenant testified that she sent the landlord her forwarding address via text message on October 1, 2019. A copy of the text evidencing the forwarding address was provided.

The tenant testified that she has received two cheques from the landlord. A cheque for the sum of \$450.00 was posted by the landlord on October 5, 2019 and a further cheque arrived in January 2020. The tenant has not negotiated these cheques with the landlord as she had filed an application at the Residential Tenancy Branch.

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 later of 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 the tenant, I find that the landlord was served with the tenant's forwarding address in writing by text messaging on October 1, 2019 which is the standard practice that the parties undertook to communicate. I find that the landlord was aware of the tenant's forwarding address as the landlord forwarded a partial payment of the security deposit in October 2019.

Based on the evidence, 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 October 1, 2019, however the landlord forwarded two cheques for the sum of \$450.00 and \$332.00 respectively in October 2019 and January 2020 which the tenants have not negotiated.

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.

The tenant requested interest on her security deposit at the hearing. interest on deposits is determined by section 4 of the Residential Tenancy Regulation:

The rate of interest under section 38 (1) (c) of the Act [return of deposits] that is payable to a tenant on a security deposit or pet damage deposit is 4.5% below the prime lending rate of the principal banker to the Province on the first day of each calendar year, compounded annually.

Since the prime lending rate has been lower than 4.5% since 2009, the interest payable on deposits has been nil, therefore no interest will be payable.

As the tenant was successful in her application, I find that they are entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the Act.

Security deposit	\$835.00
Double the security deposit	\$835.00
Filing fee	\$100.00
Total Monetary Award	\$1,770.00

The cheques that the tenants have received from the landlord should be negotiated at the bank and the landlord shall be responsible for the shortfall. I also note that should the tenant not be able to successfully negotiate the received cheques the landlord remains responsible for the full amount of the amount award.

Conclusion

I issue a monetary order to the tenants in the amount of \$1,770.00

The tenants are 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: February 11, 2020

Residential Tenancy Branch