



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

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 and 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenant served the landlord with his application for dispute resolution via registered mail but neither party could recall on what date. I find that the tenant's application for dispute resolution was served on the landlord in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. 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 both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in July 2018 and ended on September 30, 2019. Monthly rent in the amount of \$2,200.00 was payable on the first day of each month. A security deposit of \$1,100.00 was paid by the tenant to the landlord. The parties agreed that the tenant would pay the landlord \$200.00 per month for utilities and that after six months of time the landlord would provide the tenant with copies of the utilities and that if the tenant underpaid, he would pay the difference to the landlord and if the tenant overpaid, the landlord would refund the overpayment to the tenant.

The tenant testified that the landlord did not provide him with copies of the utility bills for the last six months of his tenancy, so he believes he overpaid, and that the landlord owes him money, which he estimates at \$400.00. The landlord testified that she sent the tenant copies of the utility bills for the last six months of the tenancy via email and that she does not owe the tenant anything. The landlord did not provide any evidence to prove that the utility bills were provided to the tenant.

Both parties agreed on the following facts. The tenant provided the landlord with his forwarding address via email on October 3, 2019 and the landlord received it on or around that date. The October 3, 2019 email was entered into evidence. The landlord did not return the tenant's security deposit or file an application with the residential tenancy branch for authorization to retain the tenant's deposit.

The landlord testified that she kept the security deposit because the tenant damaged the bathtub and glass door of the bathtub. The landlord testified that the tenant agreed in an email for the landlord to retain a portion of his security deposit. The landlord did not enter anything into evidence. The tenant testified that he only authorized the landlord to retain \$100.00 for cleaning. The tenant entered into evidence a text message dated October 28, 2019 which states:

The \$100 was the cost quoted to me for the cleaning and you agreed to take that over so I am glad you are sticking to that agreement. Ok, please send me the scanned Bill's for the utilities. I am currently not authorizing deduction from the

damage deposit, please send the quotes for review. I am trying to be fair here, but I wasn't even made aware there was a crack until you notified my almost 3 weeks after I left.

The text messages entered into evidence go back and forth between the tenant and the landlord. The landlord responded to the above text.

Analysis

Security Deposit

Based on the October 3, 2019 email entered into evidence and the testimony of both parties, I find that the landlord was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the tenant's forwarding address because the landlord confirmed receipt of it.

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 Policy Guideline 17 states that unless the tenants have 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 claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*.

Based on the tenant's testimony and the October 28, 2019 text message entered into evidence, I find that the tenant only authorized the landlord to retain \$100.00 from the security deposit. The landlord did not provide any proof to support her testimony that the

tenant agreed for the landlord to deduct more than \$100.00 from the security deposit. While text messages do not constitute proper service under the *Act*, I find that, pursuant to section 71 of the *Act*, the landlord was sufficiently served, for the purposes of this *Act*, with the tenant's authorization to retain \$100.00 for cleaning. I find that the tenant did not authorize any other deductions from his security deposit.

In this case, the landlord did not return the tenant's security deposit or file an application to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address in writing. Therefore, the tenant is entitled to receive double his security deposit as per the below calculation:

$$\begin{aligned} & \$1,100.00 \text{ (security deposit)} - \$100.00 \text{ (authorized deduction)} * 2 \text{ (doubling} \\ & \text{provision)} = \mathbf{\$2,000.00} \end{aligned}$$

Utilities

I find that the tenant's October 28, 2019 text message supports the tenant's testimony that the landlord did not provide him with copies of his utility bills and that the amount for utilities could not be reconciled with what he paid. I find that had the landlord provided the tenant with the utilities via email or text, then those emails could have been entered into evidence, which they were not.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find that without the utility bills I cannot determine what loss was suffered; however, I am satisfied that the tenant, on a balance of probabilities, suffered a loss. Had the tenant underpaid, the landlord would have, more likely than not, provided the tenant with copies of the utilities.

I find that the tenant is entitled to \$100.00 in nominal damages.

As the tenant was successful in his application for dispute resolution I find that he is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant under the following terms:

Item	Amount
Doubled security deposit less authorized deduction	\$2,000.00
Nominal damages	\$100.00
Filing Fee	\$100.00
TOTAL	\$2,200.00

The tenant is 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: March 23, 2020

Residential Tenancy Branch