



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

On October 30, 2019, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail on November 2, 2019 and the Landlord confirmed receipt of this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

The Landlord advised that her evidence was served to the Tenant by hand at the Tenant’s place of employment on March 12, 2020 as per the Tenant’s request. The Tenant confirmed that she received this package, that she had reviewed it, and that she was prepared to respond to it. As the Tenant had reviewed the evidence and was prepared to respond to it, I have accepted this evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit?
- Is the Tenant entitled to monetary compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on February 1, 2018 and ended when the Tenant gave up vacant possession of the rental unit on April 7, 2018 by way of a settlement agreement (the relevant decision is noted on the first page of this decision). Rent was established at \$1,400.00 per month, due on the last day of each month. A security deposit of \$700.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Tenant provided her forwarding address in writing by registered mail on August 20, 2019. This address was provided pursuant to a decision dated July 24, 2019 (the relevant decision is noted on the first page of this decision).

The Tenant advised that she is seeking double her security deposit pursuant to Section 38 of the *Act*, in the amount of **\$1,400.00**, because the Landlord did not either return the deposit in full or make an Application to claim against this deposit within 15 days of being deemed to receive the Tenant's forwarding address in writing. The Landlord confirmed that she neither returned the deposit in full, nor made an Application to claim against this deposit.

The Tenant advised that she is also seeking compensation in the amount of **\$1,026.66** for the pro-rated April 2018 rent. Based on the settlement agreement dated April 9, 2018, she believes she is entitled to a return of this rent amount because she paid this month's rent in full but only occupied the rental unit until April 7, 2018. She alleged that the Landlord agreed to pay her back the pro-rated amount of rent for this month and she referenced her documentary evidence which she claims supports this position.

The Landlord summarized the history of the tenancy, she spoke to the interactions in the previous Dispute Resolution proceedings, and she stated that the Arbitrator in the first hearing advised her that she had a right to April 2018 rent. She also stated that the Tenant told the Arbitrator in the second hearing that she was seeking compensation from the Landlord because the Landlord's property is worth a lot of money and because the Landlord has the money to pay. However, with respect to this particular claim, she did not provide any other direct testimony regarding the amount the Tenant is seeking.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Section 39 of the *Act* states that if the Tenant does not provide the Landlord with a forwarding address in writing within one year after the end of the tenancy, then the Landlord may keep the deposit and the Tenant's right to the return of the deposit is extinguished.

When reviewing the evidence before me, while the Tenant believed she provided a forwarding address in writing by posting it to the rental unit door on April 7, 2018, it was determined in the decision dated July 24, 2019 that this was not an acceptable method of serving a document pursuant to Section 88 of the *Act* and thus, a forwarding address in writing was never provided. As the undisputed evidence is that the Tenant then provided a forwarding address in writing in compliance with Section 88 of the *Act* on August 20, 2019, I am satisfied that this had been served over one year since the end of the tenancy. Consequently, the Tenant had extinguished her right to the return of the deposit.

Had the Tenant believed she legitimately provided the Landlord with her forwarding address in writing by posting it to the rental unit door on April 7, 2018, it is not clear to me why she only made her Application for a return on this deposit almost a year later on April 2, 2019. This appears as it may have been an intentional attempt to prolong the issue for as long as possible and it causes me to be suspicious of the Tenant's intentions.

As the Landlord made no mention during the hearing of Section 39 of the *Act*, I can reasonably infer that she was not aware of this Section. As a caution, the Landlord should be mindful of her responsibilities and obligations to comply with Section 38 of the *Act* in future tenancies when a forwarding address in writing is legitimately provided within one year of a tenancy ending, or she may face the potential risk of the doubling provisions of this Section.

Based on the above, I am satisfied that the Tenant did not provide a forwarding address in writing within a year of the tenancy ending and that the Landlord was permitted to keep the security deposit, pursuant to Section 39 of the *Act*. As a result, I dismiss the Tenant's claim for double the security deposit in its entirety.

With respect to the Tenant's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

While both parties disagreed with how much rent should be paid for April 2018, I find it important to note that the decision dated April 9, 2018 is silent on this matter as the Arbitrator specifically noted that "I made no finding with respect to rent that may be owed to the Landlord." When assessing the merits of this claim, I do also note that in that decision, the Tenant advised that she "left on March 28, 2018, and have not been back since". If the Tenant had left the rental unit on March 28, 2018 and somehow thought the tenancy was over, it is not clear to me why she electronically transferred the rent to the Landlord on March 31, 2018. In my view, this would appear that as the tenancy had not been ended pursuant to the *Act*, the Tenant was still of the belief that this was an ongoing tenancy and that she owed the rent. Furthermore, I can reasonably infer that she had not likely turned her mind to a possibility of a settlement prior to the hearing. As such, I find it more likely than not that the Tenant anticipated this to be an

ongoing tenancy, which explains why rent was paid in full. However, with respect to this claim, the burden on proof is on the Tenant to establish that compensation is due, and I find that the Tenant has provided insufficient evidence of such.

As no agreement was made between the parties in that hearing with respect to April 2018 rent and as the Tenant has not provided sufficient evidence to prove this claim, I dismiss this in its entirety.

As the Tenant was not successful in her claims, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the Tenant's Application in its entirety.

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: April 9, 2020

Residential Tenancy Branch