



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

At the outset, the named landlord, F.L. stated that she was not the landlord, but the landlord's agent. The tenant, confirmed that she has never met the landlord and that all of her contact was through the named landlord, F.L., but that the landlord is named, P.C. The landlord's agent, P.C. confirmed that she only acts for the named landlord, P.C. On this basis, I accept the undisputed affirmed testimony of both parties and find that the named landlord, F.L. is in fact just an agent and not the landlord. As such, the tenant's application is amended removing the named landlord, F.L.

Both parties also confirmed that F.L. acts as an agent for P.C. and that all of the tenant's communications with the landlord were through F.L. On this basis, I accept the landlord's agent, F.L. (the landlord) to act on behalf of P.C.

Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail on January 4, 2020. Both parties also confirmed the tenant served the landlord with the submitted documentary evidence via Canada Post

Registered Mail on March 17, 2020 and the tenant's 8 page written submissions via email on April 2, 2020. The landlord confirmed receipt of all of the tenant's submitted documentary evidence. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence via Canada Post Registered Mail on March 24, 2020. Neither party raised any service issues.

I accept the undisputed affirmed testimony of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

The tenant's agent, A.K. (the tenant) stated at the outset that a request to amend the monetary claim to \$1,100.00 from \$5,700.00. The landlord made no comment. On this basis, I find that there is no prejudice to either party in amending the monetary claim lowering it to \$1,100.00.

The tenant also seeks pursuant to section 95 of the Act, that the landlord be issued a fine of up to \$5000 as administrative penalties for failing to follow the Act. Both parties were advised that the request for Administrative Penalties were to be initiated by the applicant to the Director, Compliance and Investigations for determination.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation, return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 1, 2017 on a one year fixed term tenancy ending on March 31, 2018 and then ends as per the submitted copy of the signed tenancy agreement dated March 26, 2017. The monthly rent was \$2,300.00 payable on the 1st day of each month. A security deposit of \$1,150.00 was paid. A 4 page addendum with 17 additional addendum conditions was also agreed to.

The tenant stated that as part of an addendum, the landlord required a \$500.00 deposit paid for use of cannabis in section 6, Use of Premises. The tenant referred to exhibit "L" in the submitted documentary evidence which states in part,

A.A. agrees to put down \$500 as a security deposit. A.D. forfeits the \$500 security deposit if there is any evidence of him using cannabis on the premise or the front yard, back yard and back lane of the property.

Both parties confirmed that the tenancy ended on September 1, 2019 and that the landlord did not file an application for dispute to retain the second \$500.00 security deposit nor has the tenant given permission to the landlord to retain it.

The tenant seeks an amended monetary claim of \$1,100.00 which consists of:

\$1,000.00	\$500.00 Illegal Deposit + \$500.00 Compensation, Sec. 38(6)
\$100.00	Filing Fee

The tenant states that the landlord had contravened the Act by requiring a second security deposit of \$500.00 related to "Cannabis" from the tenant in addition to the original \$1,150.00 security deposit paid. The tenant argued that section 19 (1) of the Act prohibits a landlord from requiring or accepting either a security or a pet deposit that is greater than the equivalent to ½ of one months rent payable under the tenancy agreement. The tenant also states that section 20 (a) and (b) that a landlord must not require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement or require or accept more than one security deposit in respect of a tenancy agreement.

The landlord argued that the \$500.00 deposit was for the tenant's roommate, A. A. and was not part of the tenancy agreement. The landlord stated that there was no separate tenancy agreement for A.A.

The tenant stated the landlord has required and accepted the \$500.00 Illegal/Security Deposit from the tenant, A.A. who was her partner. The tenant stated that the tenancy ended on September 1, 2019. The landlord provided direct testimony confirming that the tenancy ended on September 1, 2019 and the tenants had provided an invalid address forwarding mailing address. Both parties confirmed that the tenant used the rental unit address and that the tenant had engaged the mail forwarding services from Canada Post.

The tenant claims that the landlord failed to apply for dispute of the illegal/security deposit within the allowed 15 day timeframe as per the Act.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a 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 subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, both parties confirmed the landlord requested and received an additional \$500.00 security deposit from the tenant in relation to "Cannabis" above and beyond the allowed amount of ½ of the monthly rent already paid of \$1,150.00. I find based upon the direct testimony of both parties and the language of the addendum regarding the \$500.00 that the landlord did seek and obtain an additional \$500.00 for a security deposit. The landlord is in contravention of 19(1) of the Act. The tenant is entitled to return of the original \$500.00 "Illegal Security Deposit".

Both parties confirmed that the tenant provided the rental unit address as her forwarding address in writing at the end of tenancy and that she had engaged the mail forwarding services of Canada Post. Both parties confirmed the landlord still holds the additional \$500.00 security deposit as of the date of this hearing and that the landlord has not applied for dispute to retain it nor has the tenant given her consent to the landlord to retain it. As such, I find that section 38(6) applies in this case, the tenant is entitled to compensation equal to the \$500.00 "Illegal Security Deposit".

The tenant has established a total monetary claim of \$1,000.00. I also find as the tenant has been successful that the tenant is entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$1,100.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the 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: April 15, 2020

Residential Tenancy Branch