



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 was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$100.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for a monetary order for the return of double the \$750.00 security deposit; and to recover the \$100.00 cost of her Application filing fee.

The Tenant, the Landlord, and an agent and translator for the Landlord, E.O. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Parties were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

The Tenant said that she sent the Application, Notice of Hearing and documentary evidence to the Landlord via registered mail on November 15, 2019. The Landlord acknowledged delivery of this package from the Tenant, which the Canada Post website said was delivered on November 18, 2019. The Tenant said that everything she uploaded to the RTB was included in this registered mail package.

The Agent said that on behalf of the Parties, he uploaded a copy of the tenancy agreement to the RTB, as well as a condition inspection report, but he did not serve this

on the Tenant. Further, the Agent uploaded this evidence to the RTB on the same day as the hearing. However, pursuant to Rule 3.15, a respondent's evidence must be received by the applicant not less than seven days before the hearing. As I explained to the Parties, this gives an applicant notice of what the respondent plans to rely on in the hearing, and it also gives the applicant time to review the respondent's submissions.

The Agent said that both Parties have copies of these documents, and he felt that the RTB should have had a copy, as well, and the Tenant had not submitted these documents, herself. The Tenant said she never received a copy of the tenancy agreement; therefore, she could not upload it herself. I advised the Parties that since the Landlord had not given the Tenant advance notice of the documents on which he intended to rely in the hearing, and because doing so was in breach of Rule 3.15, I would not consider the Landlord's documentary evidence in this proceeding.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on April 21, 2019, running until May 31, 2020, with a monthly rent of \$1,500.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$750.00, and no pet damage deposit.

The Tenant said that she moved out of the rental unit on August 20, 2019, and provided the Landlord with her written forwarding address on August 22, 2019. The Landlord acknowledged receipt of the forwarding address, as described by the Tenant.

Gym Membership Fee

In the hearing, the Tenant said that everything that was done through the Strata had to be done through the Landlord. "I paid them a \$100.00 deposit. When I left, I tried to get my security deposit for the gym back, and I went to the Landlord for help, but there was no response. He did nothing to help me out, so I lost that."

The Landlord said that the gym usage security deposit was not returned, "...because [the Tenant] broke the contract, knowing that she had responsibility to keep the

contract. We did not receive that gym deposit; she paid it to the Strata company, and we have no way of getting that back. Not sure how she got it to the Strata.”

The Tenant said:

We all have a fob and that's how you access the unit. They code that fob to access the gym, as well. [The Landlord] emailed the Strata requesting that I get access and pay \$100.00. I [paid for the gym access], because [the Landlord] was how I got access to it. I still have the . . . I took a picture of the receipt – it says refundable, if you don't cause damage. I asked the Strata for it back, but the Strata in that building is very bad – they only respond to [the Landlord]. When I moved out, I emailed them as well, and couldn't get access to them. Throughout my tenancy, I bought furniture for my condo, and he helped me to book the elevator. The Strata wouldn't respond. I had to move in without any elevator booking, because they wouldn't respond. When I moved out, I emailed them directly, because [the Landlord] wasn't helping me. Nothing happened.

The Landlord said that the Tenant claiming that she paid the Strata, we were never advised that she paid. Strata doesn't charge extra money to allow residents to use the gym. Maybe she used it as a club house for certain dates and has to pay the deposit. Using the gym, anyone who has the key fob doesn't need to pay any extra.

The Tenant submitted a photograph of a receipt dated May 2, 2019, showing a payment of \$100.00 for a gym membership security deposit by someone in the Tenant's rental unit number. It does not say that it is refundable on this receipt.

Double the Security Deposit

The Landlord said that he did not give the Tenant her security deposit back, because she broke the fixed term tenancy agreement. The Landlord acknowledged that he did not apply for dispute resolution to claim against the security deposit.

The Landlord said:

The Tenant moved out knowing that she couldn't rent out the property she had purchased. It was her fault that she terminated the contract and caused any sort of financial losses to the owner, with a vacancy period for two months. We wanted to deal with this matter here. We didn't consciously understand that we have to file again for this matter. Basically, if we didn't claim anything back to her

and didn't return the deposit, we broke the law.

The Tenant said:

I was looking and I found a suitable tenant; she and her husband were looking for an apartment. I texted [the Landlord] that I have found a tenant. He didn't respond to me, so how could you have it vacant for more than two months? That's a hot spot near the Skytrain, and the building is brand new. My friend didn't move in, because [the Landlord] didn't get back to me.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Gym Membership Fee

The Tenant provided a copy of a receipt for a gym membership; however, I find that this did not indicate that it was a refundable fee from the Strata corporation. The Landlord said that there are no fees for the common area gym; however, this conflicts with the Tenant's gym membership receipt with the rental unit number on it. I find the Tenant's evidence that she paid the Strata a gym fee is more reliable than is the Landlord's statement to the contrary.

The Tenant's evidence is that the Landlord assisted her in communicating with the Strata, so that she could pay the gym fee and get her fob programmed for entry into the gym. It makes sense that the Landlord would have to assist her in getting the deposit back, if it was, in fact, a deposit and not a non-refundable fee to help cover the cost of equipment upkeep and replacement. When I consider the evidence before me in this matter overall, I find that the Tenant has not provided sufficient evidence to establish that she is owed a refundable deposit from the Strata or the Landlord. I, therefore, dismiss this claim without leave to reapply.

Double the Security Deposit

I find that the Tenant provided her forwarding address to the Landlord on August 22, 2019, and that the tenancy ended on August 20, 2019. Section 38(1) of the Act states the following about the connection of these dates to a landlord's requirements surrounding the return of the security deposit:

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.

Pursuant to section 38 of the Act, the Landlord was required to return the \$750.00 security deposit within fifteen days of August 22, 2019, namely, by September 6, 2019, or to apply for dispute resolution to claim against the security deposit. The Landlord provided no evidence that he returned any amount of the security deposit or applied to the RTB for dispute resolution, claiming against the security deposit. Therefore, I find the Landlord failed to comply with his obligations under section 38(1).

Section 38(6)(b) states that if a landlord does not comply with section 38(1) that the landlord must pay the tenant double the amount of the security deposit. There is no interest payable on the security deposit.

I, therefore, award the Tenant \$1,500.00 from the Landlord in recovery of double the security deposit. Given that the Tenant was predominantly successful in her Application, I also award her recovery of the \$100.00 Application filing fee for a total award of **\$1,600.00.**

Conclusion

The Tenant's claim against the Landlord for return of double the security deposit is successful in the amount of \$1,500.00. The Landlord did not return the Tenant's security deposit or apply for dispute resolution pursuant to his obligation to do so under section 38(1) of the Act. I award the Tenant with double the amount of the \$750.00 security deposit, plus recovery of the \$100.00 Application filing fee.

The Tenant provided insufficient evidence to support her claim for recovery of the gym

membership fee from the Landlord; therefore, that claim is dismissed without leave to reapply.

I grant the Tenant a monetary order under section 67 of the Act from the Landlord in the amount of **\$1,600.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 29, 2020

Residential Tenancy Branch