



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT (Tenant)
 FFL, MNRL-S (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross applications for dispute resolution filed by the parties.

The Tenant filed the application November 20, 2019 (the “Tenant’s Application”). The Tenant sought return of double the security deposit and reimbursement for the filing fee.

The Landlord filed the application December 05, 2019 (the “Landlord’s Application”). The Landlord sought to recover unpaid rent, to keep the security deposit and reimbursement for the filing fee.

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The only evidence submitted by the parties related to service. I addressed service of the hearing packages.

The Landlord confirmed receipt of the hearing package for the Tenant’s Application.

The Tenant testified that he did not receive the hearing package for the Landlord’s Application.

The Landlord testified that he sent the hearing package by registered mail on December 06, 2019 to the address on the Tenant’s Application.

The Tenant advised that he does not live at the address on his application and that he did not look into whether mail had been sent there for him.

I was satisfied based on the testimony of the Landlord that the hearing package was sent to the address on the Tenant's Application by registered mail on December 06, 2019. Although the Tenant testified that he did not receive the hearing package, he also had not checked whether mail was sent to the address he provided on his application. Therefore, I am not satisfied the Tenant knows whether the package was sent or not and accept the Landlord's testimony that it was. The Landlord was permitted to serve the Tenant at the address provided on the Tenant's Application as that is the point of providing an address. I am satisfied the Tenant was served with the hearing package in accordance with section 89(1)(d) of the *Residential Tenancy Act* (the "*Act*"). I am satisfied the package was served in sufficient time prior to the hearing.

Given I was satisfied of service of the hearing packages, I proceeded to hear both applications. The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to reimbursement for the filing fee?
3. Is the Landlord entitled to recover unpaid rent?
4. Is the Landlord entitled to keep the security deposit?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord testified that there was a written tenancy agreement between the parties. The Landlord testified that the tenancy was a fixed term tenancy for one year that then became a month-to-month tenancy.

The Tenant testified that he does not recall there being a written tenancy agreement between the parties. The Tenant testified that the tenancy was a month-to-month tenancy.

The parties agreed the tenancy started October 01, 2017 and ended September 01, 2019. The parties agreed rent was \$1,100.00 per month due on the first day of each month. The parties agreed the Tenant paid a \$525.00 security deposit.

The Tenant testified that he sent the Landlord a letter with his forwarding address on November 10, 2019. He testified that he mailed the letter to the Landlord. The Tenant testified that he also sent the Landlord a text message with his forwarding address.

The Landlord denied receiving a text message or letter with the Tenant's forwarding address in it. The Landlord testified that he received the Tenant's forwarding address when he got served with the Tenant's Application.

The parties agreed there was no formal move-in inspection done. The Landlord confirmed the Tenant was not provided two opportunities to do a move-in inspection.

The Landlord testified that he did a move-out inspection September 01, 2019. He testified that the Tenant was not given two opportunities to do the inspection. The Landlord testified that the Tenant gave him one month's notice that he was leaving.

The Tenant testified that no move-out inspection was done.

The Landlord sought to recover August rent.

The Landlord testified as follows. The Tenant did not pay August rent. The Tenant asked the Landlord if he could leave his belongings for the Landlord in exchange for August rent. The Landlord agreed to this. However, when the Tenant moved the Landlord calculated the value of the items left behind and it was not even \$500.00 worth of belongings. The Tenant had taken his stereo system which was the only item of value. He told the Tenant the belongings left behind were junk and that the Tenant needed to pay rent.

The Tenant confirmed the Landlord agreed he could exchange his belongings for August rent. The Tenant denied that the belongings he left behind were not worth money. The Tenant testified that he left a bed which had cost \$1,500.00 and a sofa which had cost \$2,000.00. The Tenant testified that he heard for the first time in

October that the Landlord thought the belongings left behind were junk. The Tenant testified that he left appliances, linens and dishes in addition to the bed and sofa. The Tenant testified that the items were in good condition. The Tenant testified that he did not leave the stereo behind because it was junk.

During the hearing, the Tenant confirmed the address on the Tenant's Application was an address he could be reached at.

Analysis

Pursuant to rule 6.6 of the Rules of Procedure (the "Rules"), it is the applicant who has the onus to prove their claim. The standard of proof is on a balance of probabilities meaning "it is more likely than not that the facts occurred as claimed".

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Security Deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Section 38(1) and (6) state as follows:

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.
- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I am not satisfied based on the evidence provided that the Tenant was given two opportunities to do a move-in or move-out inspection. Therefore, I do not find that the Tenant extinguished his rights in relation to the security deposit under sections 24 or 36 of the *Act*.

I do not find it necessary to determine whether the Landlord extinguished his rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage and the Landlord has claimed for unpaid rent.

The Tenant testified that he sent the Landlord his forwarding address by letter and text message. The Landlord denied receiving these. The Tenant did not submit evidence to support his verbal testimony that he sent his forwarding address to the Landlord. In the absence of further evidence to support the Tenant's verbal testimony, I am not satisfied the Tenant sent his forwarding address to the Landlord.

I acknowledge that the Tenant's forwarding address was provided on the Tenant's Application. However, this is not sufficient. If tenants want their security deposit returned, they are required to provide the landlord their forwarding address prior to, and separate from, an Application for Dispute Resolution.

Given I am not satisfied the Tenant provided the Landlord with his forwarding address as required, I am not satisfied section 38(1) of the *Act* was triggered. The Landlord filed the Landlord's Application prior to receiving a forwarding address from the Tenant, other than the address on the Tenant's Application. I find the Landlord complied with section 38(1) of the *Act* by claiming against the security deposit prior to receiving a proper forwarding address from the Tenant. Therefore, the Tenant is not entitled to return of double the security deposit under section 38(6) of the *Act*.

Unpaid rent

Section 26(1) of the *Act* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the other for damage or loss that results.

The *Act* sets out reasons a tenant can withhold rent. In addition, a tenant can withhold rent with the consent of the landlord.

Both parties agreed that the Landlord agreed to the Tenant exchanging his belongings for August rent. There was no issue that this agreement occurred. Therefore, I accept that the parties agreed the Tenant could exchange his belongings for August rent.

The parties disagree about what happened next. The Landlord testified that the Tenant did not leave all of the belongings and that the belongings left were not worth much. The Landlord testified that he told the Tenant this. The Tenant disagreed and testified that he left the belongings worth money and that the belongings were in good condition. The Tenant also denied that the Landlord notified him of an issue prior to October.

Neither party submitted evidence to support their verbal testimony about this issue.

This is the Landlord's application and the Landlord has the onus to prove he is entitled to recover August rent. As stated, I am satisfied the Landlord agreed the Tenant could exchange his belongings for August rent. Given the conflicting testimony, and lack of evidence to support the Landlord's position, I am not satisfied the Tenant failed to follow through on his part of the agreement. Given this, I am satisfied the Landlord consented to the Tenant withholding August rent and am not satisfied the basis for that consent was not fulfilled. Therefore, I am not satisfied the Landlord is now entitled to seek August rent.

I also note that the Landlord acknowledged the belongings left were worth some money yet sought full rent for August despite the agreement between the parties. I would not have been satisfied that the Landlord was entitled to \$1,100.00 in rent in any event.

Filing fees

Neither party was successful in their application. Therefore, the parties can bear the cost of their own filing fees.

Summary

The Landlord sought to keep the security deposit on the basis that he is owed August rent. I am not satisfied the Landlord is owed August rent. Therefore, the Landlord is not entitled to keep the security deposit and must return the security deposit to the Tenant. The Tenant confirmed during the hearing this could be done to the address on the Tenant's Application. The Tenant is not entitled to return of double the security deposit as explained.

The Landlord must return \$525.00 to the Tenant. I issue the Tenant a Monetary Order in this amount.

Conclusion

The Landlord must return \$525.00 to the Tenant. The Tenant is issued a Monetary Order in this amount. If the Landlord does not return the \$525.00, this Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: April 30, 2020

Residential Tenancy Branch