



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD MNDCT RPP

Introduction

This hearing was convened in response to two applications by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlord to return the tenant’s personal property pursuant to section 65.

CD, advocate for the tenant, appeared on behalf of the tenant in this hearing. While the tenant’s advocate attended the hearing by way of conference call, the landlord did not. I waited until 11:12 a.m. to enable the landlord to participate in this scheduled hearing for 11:00 a.m. The tenant’s advocate was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant’s advocate, witness, and I were the only ones who had called into this teleconference.

The tenant’s advocate provided sworn, undisputed testimony that the landlord was served with the tenant’s applications for dispute resolution and evidence packages on April 3, 2020 and April 17, 2020. The tenant provided the tracking information for these packages. In accordance with sections 88, 89, and 90 of the *Act*, I find the landlord deemed served with the tenant’s applications and evidence packages for this hearing on April 8 and April 22, 2020, 5 days after mailing. The landlord did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the tenant entitled to the return of their security deposit?

Is the tenant entitled to the monetary order requested?

Is the tenant entitled to an order requiring the landlord to return the tenant's personal property?

Background and Evidence

The tenant and his advocate provided the following submissions for this hearing. This month-to-month tenancy began on October 1, 2019, with monthly rent set at \$995.00, payable on the first of every month. The tenant paid a security deposit in the amount of \$250.00, which the landlord still holds.

This tenancy ended on December 13, 2019 after the police had attended after the landlord had reported that the tenant was breaking into the rental unit after being evicted. The tenant was taken away to the hospital, and when the tenant was released from the hospital, the landlord did not allow the tenant to return to the residence. The tenant has been unable to return to the residence since that date, even though the landlord was provided rent in the amount of \$995.00 for the month of December 2019. The tenant provided a copy of the police report for the incident on December 13, 2019. The report states that the landlord has "called to report that a tenant he had evicted had entered back into the residence". The tenant's advocates testified that the tenant was never evicted, nor did the landlord have the right to deny the tenant access to the rental unit. The tenant is seeking a monetary order in the amount of \$995.00 for termination of the tenancy in contravention of the *Act*.

The tenant is also seeking an order for the return of his personal belongings, as the landlord refused the tenant access to retrieve his personal belongings, nor were his belongings returned to him.

The tenant also applied for the return of his security deposit. A copy of a signed proof of service was submitted in evidence to support that the tenant's forwarding address was posted on the landlord's door on February 3, 2020.

Analysis

Prohibitions on changes to locks and other access

- 31 (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

- (a) the tenant agrees to the change, and
- (b) the landlord provides the tenant with new keys or other means of access to the rental unit.

I accept the undisputed testimony of the tenant's advocates that the tenant had paid rent for the entire month of December 2019, but was denied access as of December 13, 2019. I find that the tenant's advocates provided undisputed testimony that the tenancy was still ongoing, and the landlord did not have the right to deny the tenant access to the rental unit or his belongings. Accordingly, I allow the tenant's monetary claim in the amount of \$995.00 for the landlord's failure to comply with section 31(1) of the *Act*.

I find that the landlord did not have the right to seize or prevent access to the tenant's personal belongings. Pursuant to section 65(1)(e) of the *Act*, I order that the landlord return to the tenant his personal belongings within 14 days of the receipt of this order.

Section 38(1) of the *Act* requires a 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 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 return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

I am satisfied that the tenant had provided his forwarding address to the landlord in writing. In accordance with section 88 and 90 of the *Act*, I find the landlord deemed served with the forwarding address on February 6, 2020, 3 days after address was posted on his door. I find it undisputed that the landlord had failed to return any portion of the security deposit to the tenant within 15 days of be the date the landlord was deemed served with that address. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security

deposit. I find that the landlord did not have written authorization at the end of the tenancy to retain any portion of tenant's security deposit. In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order in an amount equivalent to double the original security deposit.

Conclusion

Pursuant to section 65(1)(e) of the *Act*, I order that the landlord return to the tenant his personal belongings within 14 days of the receipt of this order.

I allow the tenant's monetary claims as set out in the table below. The tenant is provided with a Monetary Order in the amount of \$1,495.00.

Item	Amount
Return of Security Deposit	\$250.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	250.00
Compensation for contravention of 31(1) of the <i>Act</i>	995.00
Total Monetary Order	\$1,495.00

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: May 26, 2020

Residential Tenancy Branch