



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 4, 2020. The landlord stated that she did not serve the tenant with the submitted documentary evidence as she stated that she thought that the request to the Residential Tenancy Branch (RTB) to email her evidence on her behalf would take place. Both parties were advised that the RTB does not serve documents on behalf of parties. Based on this evidence, the landlord's documentary evidence was excluded from consideration in this decision. The landlord was also advised that she was free to provide her evidence in her direct testimony during the hearing if she wished to do so. Neither party raised any further service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of all or part of the security deposit?

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.

Both parties confirmed that a signed tenancy agreement was made, but that neither party had provided a copy.

The tenant seeks a monetary claim of \$275.00 which is the return of the entire security deposit.

The tenant stated that the tenancy ended on December 1, 2019. The landlord stated that she was advised by another tenant that the tenant had vacated the rental on December 3, 2019 as she was not present. The tenant stated that he provided his forwarding address in writing for return of the security deposit in an email on December 1, 2019. The landlord confirmed that she received it as claimed by the tenant. Both parties confirmed that the tenant paid a \$275.00 security deposit at the start of the tenancy.

Both parties confirmed that the tenant did not consent to the landlord retaining the \$275.00 security deposit nor has the tenant been served with an application filed by the landlord seeking to retain the security deposit. The landlord also stated that she had retained the security deposit as the rental unit was left damaged and without furnishings as it was provided with furniture.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit 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 deposit.

I accept the undisputed affirmed evidence of both parties and find based upon the affirmed testimony of both parties that the tenancy ended on December 1, 2019 and that the landlord did not return the \$275.00 security deposit within the allowed 15 day period. I also find that the landlord did not file an application for dispute of returning the security deposit to the tenant. The tenant confirmed in his testimony that consent was not given to the landlord to retain the security deposit. On this basis, I find that the tenant is entitled to return of the original \$275.00 security deposit.

I also find that the landlord having been served with the tenant's forwarding address on December 1, 2019 failed to return the security deposit and is liable to an amount equal to the \$275.00 security deposit as per section 38(6) of the Act.

Conclusion

The tenant is granted a monetary order for \$550.00.

This order must be served upon the landlord. Should the landlord fail to comply with the 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: June 01, 2020

Residential Tenancy Branch