



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38 of the *Act*.
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72 of the *Act*.

The tenant RS and landlord ET attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's application for Dispute Resolution and receipt of the evidentiary package after the documents were sent by Canada Post registered mail on January 14, 2020. The landlord affirmed receipt. I find that the landlord was served in accordance with section 88 and 89 of the *Act*.

The tenant affirmed that she had not been provided evidentiary documents by the landlord. The landlord testified that due to Covid-19 he was unable to file any evidentiary materials as he was working from home and was unable to travel to the office. The landlord was provided 24 hours to submit evidence in relation to this hearing onto the Residential Tenancy Branch site.

The tenant provided the Canada Post tracking number in support of service which is listed on the cover page of this decision.

Preliminary Matter – Amendment

I note that in the tenant's application, the landlord's company name is included with the name of a person. The landlord advised the correct name of the company is without the named individual. Based on the landlord's testimony and review of the names in the tenancy agreement, I find it reasonable to amend the name of the company.

Issues to be Decided

Is the tenant entitled to the following?

- an order for the landlord to return the security deposit pursuant to section 38 of the *Act*?
- an order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's and tenant's testimony and my findings are set out below:

This tenancy was a short-fixed term rental. The tenant initially booked via Air bnb and paid her deposit by e-transfer and was informed by the landlord that the transfer was not covered by Air bnb. The parties agreed to enter into one-month lease agreement for a two-bedroom condo unit using a standard Residential Tenancy Agreement. A copy of the tenancy agreement was submitted into evidence.

The tenant testified that this tenancy began on November 1, 2019 and ended on November 30, 2019 under a vacate clause. Rent in the amount of \$4,700.00 was paid for the one-month term tenancy. A security deposit of \$1,000.00 was paid by the tenant to the landlord which is held in trust by the landlord. A written tenancy agreement was signed by both parties.

The tenant testified that the landlord obtained a further \$305.00 for the parking space in the building. The tenant and landlord both affirmed that a move-in inspection was conducted on November 7, 2019 and a move-out inspection on November 29, 2019.

The tenant testified that she sent the landlord her forwarding address via registered mailing on January 11, 2020 to the address on the tenancy agreement. This was disputed by the landlord who testified that he never received the registered mailing. He affirmed that it should have been posted to the address on the condition inspection report.

The tenant testified that the landlord has not returned the security deposit or filed an application to retain it. The tenant affirmed that despite her attempts to obtain her deposit back and to obtain a copy of the move-out inspection as documented in the "Air BNB chat" (submitted in evidence), the landlord has failed to return the security deposit back or provide her with a copy of the condition inspection report.

The landlord testified that the tenant's children had broken the blind and that there was damage to the rental unit including a broken shower head and stains on the carpet. The landlord affirmed that they undertook the move-in and move-out inspection and were entitled to keep the \$1,000.00 security deposit as agreed with the tenant.

The tenant agreed that she had advised the landlord that the roll away blind was broken during the tenancy and at the time of the move-out inspection had agreed that some deduction could be made for the roll away blind, but had not agreed to the damage to the shower head or stains to the carpet.

The tenant affirmed that the shower head was loose, and that the landlord had added the damages in the move-out inspection after she vacated the unit. The tenant affirmed that she had requested her damage deposit and the move-out inspection on the "Air BnB" chat several times and provided copies of the chat in her evidentiary materials.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for Dispute Resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the 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 section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit. The tenant testified that she had not authorized the landlord to retain all of the security deposit.

Section C(3) of Residential Tenancy Branch Policy Guideline 17 states that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing.

Based on the testimony of the tenant, I find that the landlord was served with the tenant's forwarding address in writing by registered mail on January 11, 2020. I find the landlord had 15 days to return the security deposit to the tenant or file an application for Dispute Resolution proceedings.

Based on the evidence, I find that the landlord did not file an application with the Residential Tenancy Branch to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address in writing. Therefore, pursuant to section 38 of the *Act* and Residential Tenancy Branch Policy Guideline 17, the tenant is entitled to receive double her security deposit.

However, the tenant had agreed that the landlord could make a deduction for the blind that was damaged during the short tenancy. The landlord testified in the hearing that the replacement of the new blind and tracking element was approximately \$500.00. The landlord was advised to submit receipts within 24 hours of the damages, as he claimed he was working from home due to Covid-19 and was unable to obtain the receipts.

Within 24 hours of the hearing, the landlord submitted a receipt for the replacement track for the sum of \$835.00 plus taxes. I decline to award this amount as there was a dispute between the parties as to the size of the window in the hearing and the landlord affirmed that the replacement cost was approximately \$500.00 for the track and the blind.

I decline to award the landlord for the showerhead and stains to the carpet as there is dispute as to when these were added to the move-out inspection. Furthermore, it was the landlord's responsibility to ensure that he handed the tenant a copy of the move-out condition inspection on her vacating the unit.

Pursuant to section 38 of the *Act* and Residential Tenancy Branch Policy Guideline 17, the tenant is entitled to receive double her security deposit, deducting the \$500.00 damage to the blind.

A summary of the calculation of the award follows:

ITEM	AMOUNT
Security deposit	\$1,000.00
Doubling of security deposit - section 38(6)	\$1,000.00
Deductions for the damage to the blind	(\$500.00)
Total due to tenant	\$1,500.00

As the tenant was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I grant the tenant a monetary order pursuant to section 38 of the *Act* in the amount of **\$1,600.00** as described above.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file, the order in the Provincial Court (Small Claims) to be 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 11 2020

Residential Tenancy Branch