



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDCT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

At the outset of the hearing, the tenant clarified his application. The tenant amended his claim of \$1,500.00 as he indicated that amount was entered in error. The tenant is seeking the return of his security deposit, as well as compensation under section 38 of the *Act* for the failure of the landlord to return his security deposit, for a total monetary claim of \$1,375.00. Accordingly, the tenant's application was amended to reflect this claim.

As the landlord confirmed receipt of the tenant's application for dispute resolution and evidence package, I find the landlord duly served with these materials in accordance with sections 88 and 89 of the *Act*.

The landlord testified that he had served the tenant with his evidentiary materials by way of email to the tenant's evidence. The tenant testified that he did not receive these evidentiary materials. As I am not satisfied that the tenant had received these documents, and therefore did not have the opportunity to review these documents, I

exercise my discretion to exclude the landlord's evidentiary materials for the purpose of this hearing.

Issues(s) to be Decided

Is the tenant entitled to the return of his security deposit pursuant to section 38 of the *Act*?

Is the tenant entitled to monetary compensation for the landlord's failure to comply with section 38 of the *Act*?

Background and Evidence

This fixed term tenancy began on October 17, 2019, and was to end on October 31, 2020. Monthly rent was set at \$1,375.00, payable on the first of every month. The landlord collected a security deposit in the amount of \$687.50, which the landlord still holds.

Both parties confirmed that the tenant provided a forwarding address on the move-out inspection report on January 31, 2020. The tenant provided a copy of the tenancy agreement, mutual agreement to end tenancy, as well as the move-in and move-out inspection report in his evidentiary materials.

The tenant is requesting the return of his security deposit as well as compensation for the landlord's failure to return his security deposit to him. The landlord provided undisputed testimony that the tenant provided written permission for the landlord to retain the entire deposit, as indicated on both the move-out inspection report, as well as on the Mutual Agreement to End a Tenancy. The tenant testified that although he did sign both documents, he did so under duress. The tenant testified that due to the multiple issues with the tenancy, he was under extreme stress and signed the documents in order to end the fixed-term tenancy.

The landlord responded that he had allowed the tenant to end the fixed-term tenancy, despite being given less than 30 days' notice to do so. The landlord testified that the tenant had signed the Mutual Agreement and the Move-out Inspection report with full understanding that this meant the landlord could keep his security deposit.

Analysis

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 tenant 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."

In this case, I find that the tenant signed two separate documents which contained the tenant's written permission for the landlord to retain the tenant's security deposit. Although I am sympathetic towards the fact that the tenant felt that he could not continue with this tenancy, I find that the landlord had agreed to a mutual resolution of the matter by allowing the tenant to end the fixed-term tenancy, and with less than 30 days' notice.

I find that the evidence supports that the tenant did not file an application for dispute resolution before ending this tenancy, but requested an alternate resolution of the issues by way of a signed Mutual Agreement to End A Tenancy. I am not satisfied that the tenant signed these documents under duress or coercion. I find that the landlord's actions support a willingness on part of the landlord to resolve the matter on mutually agreeable terms, rather than a contravention the *Act*. I find that the tenant agreed to the landlord's retention of his security deposit as reflected in two separate documents, and did so willingly. For this reason, I dismiss the tenant's application for the return of his security deposit, and compensation for the landlord's failure to return the deposit, without leave to reapply.

Conclusion

I dismiss the tenant's application without leave to reapply.

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 15, 2020

Residential Tenancy Branch