



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on February 05, 2020 (the “Application”). The Landlord applied to recover unpaid rent, keep the security deposit and for reimbursement for the filing fee.

The Tenant appeared at the hearing. The Landlord did not appear at the hearing which proceeded for 22 minutes. I explained the hearing process to the Tenant. The Tenant provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. The Tenant confirmed receipt of the hearing package.

The Tenant sought return of the security deposit. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered the oral testimony of the Tenant. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

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

Background and Evidence

The Landlord had submitted a written tenancy agreement and the Tenant agreed it is accurate. The tenancy started August 01, 2019 and was for a fixed term ending January 31, 2020. Rent was \$2,200.00 per month due on the first day of each month. The Tenant paid a \$1,100.00 security deposit.

The Tenant testified that she provided the Landlord with her forwarding address in a letter December 19, 2019. The Tenant testified that she provided the letter to the Landlord in person.

The Tenant testified that the parties did an inspection and she gave the keys to the rental unit back January 30, 2020. The Tenant testified that she gave the Landlord more than one month's notice ending the tenancy.

The Tenant testified as follows. She did not agree to the Landlord keeping the security deposit. The Landlord did not have an outstanding monetary order against her at the end of the tenancy.

The Tenant further testified as follows. She participated in a move-in inspection July 31, 2019. She participated in a move-out inspection January 30, 2020.

Analysis

Rule 7.3 and 7.4 of the Rules of Procedure (the "Rules") state:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The Landlord did not appear at the hearing. The Tenant did appear and was prepared to address the Application. Given this, and pursuant to rule 7.3 of the Rules, the Application is dismissed without leave to re-apply.

Given the Landlord did not attend the hearing to present his evidence, I have not considered the Landlord's evidence, other than the written tenancy agreement given the nature of this document.

Policy Guideline 17 states:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Pursuant to Policy Guideline 17, I considered the Tenant's request for return of the security deposit.

Section 38 of the *Residential Tenancy Act* (the "Act") sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

Based on the undisputed testimony of the Tenant, I am satisfied she provided the landlord with her forwarding address in writing December 19, 2019.

Based on the undisputed testimony of the Tenant, I am satisfied the tenancy ended January 30, 2020.

January 30, 2020 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from January 30, 2020 to repay the security deposit in full or file a claim against it.

The Landlord filed the Application February 05, 2020, within the 15-day time limit. I find the Landlord complied with section 38(1) of the *Act*. However, the Landlord did not appear at the hearing to provide a basis for the Application or for keeping the security deposit. Therefore, the Landlord cannot keep the security deposit based on the Application.

Sections 38(2) to 38(4) of the *Act* state:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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...

Based on the undisputed testimony of the Tenant, I am satisfied she participated in the move-in and move-out inspections and therefore did not extinguish her rights in relation to the security deposit. Section 38(2) of the *Act* does not apply.

Based on the undisputed testimony of the Tenant, I am satisfied the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. Section 38(3) of the *Act* does not apply.

Based on the undisputed testimony of the Tenant, I am satisfied the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. Section 38(4) of the *Act* does not apply.

Given the above, the Landlord has no authority to keep the security deposit and must return the security deposit to the Tenant. The Landlord must return \$1,100.00 to the Tenant. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

Conclusion

The Application is dismissed without leave to re-apply.

The Landlord must return the \$1,100.00 security deposit to the Tenant. I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails 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 *Act*.

Dated: June 29, 2020

Residential Tenancy Branch