



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties 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's husband also attended.

Both parties agree that the landlord was served with the tenant's application for dispute resolution via registered mail. I find that the landlord was served in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on February 5, 2018 and ended on November 30, 2019. A security deposit of \$425.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the rent at the beginning of the tenancy was \$850.00 per month, due on the first day of each month. Both parties agree that the tenant received a Notice of Rent Increase which increased the monthly rent to \$872.00 per month beginning March 1, 2019. The tenant testified that he does not dispute this rent increase and that it was done in accordance with the *Act*.

Both parties agree on the following facts. The tenancy agreement states that the tenant is the only occupant of the subject rental property. The tenant asked the landlord if his girlfriend could move in. The landlord agreed to allow the tenant's girlfriend to move at an increased rental rate of \$920.00 per month. The rent was increased to cover the increased cost of utilities which are included in the rent. The tenant's girlfriend moved in on March 1, 2019 and that they paid \$920.00 per month in rent for the remainder of the tenancy.

The tenant testified that the landlord should have made a new tenancy agreement and put it in writing that the new rent for himself and his girlfriend was \$920.00 per month. The tenant testified that the landlord did not do this and that the legal rent increase and the increase the tenant paid when his girlfriend moved in, amounted to an illegal rent increase. The tenant testified that he is seeking the difference between the rent paid (\$920.00) and the rent that would have been paid had his girlfriend not moved in (\$872.00) from March to November 2019 (9 months) for a total of \$432.00.

The landlord testified that the tenant and his girlfriend agreed to the change in rent which was made to offset the increased utility costs. The landlord testified that the tenant is not entitled to recover the agreed upon rent increase.

Both parties agree that the tenant provided the landlord with his forwarding address in writing on October 30, 2019 and provided the landlord with a different forwarding address on or around December 7, 2019.

Both parties agree that the landlord provided the tenant with \$340.00 of the tenant's \$425.00 security deposit on or around December 9, 2019, less than 15 days after the end of the tenancy.

The tenant testified that he did not authorize the landlord to retain any portion of his deposit. The landlord testified that she retained \$25.00 for cleaning and \$60.00 for painting. The landlord testified that the tenant agreed to the damages in the move out condition inspection report. The move out condition inspection report is signed by the tenant and damage is noted; however, the tenant did not authorize the landlord to retain any portion of his deposit. Section Z(2) of the move out condition inspection report is blank.

The tenant testified that he is seeking double his security deposit less the amount the landlord already returned, for a total of \$510.00.

Analysis

The *Act* defines a tenancy agreement as:

an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

I find that the parties verbally agreed to enter into a new tenancy agreement under the same terms as the original tenancy agreement, except the tenant's girlfriend was permitted to reside at the subject rental property and rent was \$920.00 per month. I find that this verbal agreement is binding on the parties. I find that the tenant is not entitled to recover the difference between the rent paid under the new tenancy agreement and the rent due under the original tenancy agreement as these were different agreements with different terms, and the increase in rent does not constitute a rent increase as set out under Part 3 of the *Act*.

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 to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

Based on the testimony of both parties, I find that the landlord retained \$85.00 from the tenant's security deposit without the tenant's permission to do so. While the tenant signed the move out condition inspection report, the tenant did not authorize the landlord on that report to retain any portion of his security deposit as section Z(2) of the move out condition inspection report was blank. Agreeing that damages occurred, is not the same thing as authorizing a deduction from the security deposit.

The landlord did not file an application for dispute resolution for authorization to retain any portion of the tenant's security deposit and did not return all of the tenant's security deposit within 15 days of the tenant's second provision of his forwarding address. Therefore, pursuant to section 38(6)(b) of the *Act* the tenant is entitled to receive double his security deposit as per the below calculation:

$\$425.00 \text{ (security deposit)} * 2 \text{ (doubling provision)} = \$850.00 - \$340.00 \text{ (amount landlord returned)} = \mathbf{\$510.00}.$

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

Conclusion

I issue a Monetary Order to the tenant in the amount of \$610.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: June 30, 2020

Residential Tenancy Branch