



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Don Development Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDB-DR

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on May 25, 2020 seeking an order granting a refund of the security deposit.

This participatory hearing was convened after an agent of this office determined the correct document was not in place to proceed by a direct request proceeding. This generated a notice of hearing sent to the Respondent landlord. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Act* (the “*Act*”) on June 22, 2020. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions. The tenant attended with two advocates who spoke on their behalf as their agents.

The landlord confirmed receipt of the tenant’s prepared evidence. The landlord did not submit documentary evidence for this hearing but spoke to all points raised by the tenant in their submissions.

Preliminary Matter

In their notice to end the tenancy to the landlord on April 1, 2020, the tenant listed concerns about the condition of the unit when they moved in – this includes the floor, an odour, the patio door, security status including the door intercom and smoke detector. The tenant stated in this letter: “This notice combines a final walk through for damage.”

The amount of their claim on this hearing is for \$4,400.00 – this includes: \$2,600.00 “for moving 8 months earlier than planned, due to threats and bullying”; moving expenses of \$500.00; \$400.00 for “personal belongings not returned”; and the combined security and pet damage deposits for total \$900.00. On their application, the tenant states “I am asking for \$4400 – in total.” The agents who assisted the tenant in the hearing spoke to these points with reference to the legislation and gave their submissions on what they felt are appropriate amounts of compensation.

This expedited process available to the tenant is governed by the Residential Policy Guideline 51. This was rescheduled as a participatory hearing due to the tenant not providing correct forms for the expedited process. The application for expedited hearing cannot be combined with a request for monetary compensation. While the tenant was afforded the opportunity to make submissions on these problems, the issue concerning compensation for loss or damage is not the subject of this Application.

The available measure for the tenant to address this issue is by way of a separate dispute resolution application. This affords the landlord the ability to prepare enough material to address the points raised by the tenant. Both parties have the means and an appropriate channel of communication to have a further discussion that may settle the matter.

Issue(s) to be Decided

- Is the tenant entitled to an Order granting a refund of the security deposit pursuant to section 38(1)(c) of the *Act*?

Background and Evidence

The tenancy agreement between the parties shows the tenancy started on December 1, 2018. The monthly rent was \$900.00 per month payable on the 1st of each month. The tenant paid a security deposit amount of \$450.00 and a pet deposit amount of \$450.00 on December 1, 2018. The parties signed the agreement on November 27, 2018. On the copy provided, the tenant highlighted various terms within the agreement that address the points they raise in this hearing.

The tenant provided a written notice to the landlord on April 1, 2020 that they wished to end the tenancy. The last day of the tenancy as specified is "by May 1st, 2020." This letter contained a forwarding address.

A response from the managers on the same day went to the tenant via email. The landlord stated the notice was not signed, and it is not possible to "combine final walk through, as it [had] not happened yet!"

On May 25, the tenant filed their application for a return of the security deposit through the direct request process. This amount is \$900.00, combining the security and pet damage deposits. In the hearing the tenant reiterated that there was no walk-through inspection conducted with the landlord. They reviewed their reasons for ending the tenancy; these are the issues with lack of repair and what amounted to harassment from the landlord.

The agents for the tenant spoke to the lack of a condition inspection date at the start and end of tenancy, and the tenant's entitlement to double the amount of the security and pet damage deposits. The referred to sections 23 and 38 of the *Act*.

In response, the landlord stated that they communicated with the owner of the property, who informed them that a cheque was sent on May 12, 2020. Around that time the landlord sent messages to the tenant to confirm receipt of the cheque, but they did not receive a reply. The landlord stated they did not know the amount. Previously they had advised the owner of no damages to the unit at the end of the tenancy – they advised of this on May 4.

In response to this, the tenant stated the owner confirmed they received a message from the owner advising the cheque was sent “two weeks ago.” They received this notice on June 16, 2020. They also stated: “the deposit was sent to my son” – this was the forwarding address they provided to the landlord on their notice to end the tenancy on April 1, 2020.

A statement from the tenant's son is in their evidence. This is dated May 25, 2020, and states that “[they] did not have a forwarding address at the time of notice, [they] used my address to have the deposit cheque returned . . .” Also: “As of May 25, 2020, we have not received anything in the mail, although we have tried numerous times to reach out to the building manager as well as the owner.”

Analysis

The *Act* section 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

Further, section 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

From the evidence I can establish as fact that the tenant gave their forwarding address to the landlord on April 1, 2020. This was witnessed by the tenant's son, and the tenant provided a ‘proof of service’ document attesting to this transaction. This address was that of their son. The landlord attending the hearing did not provide testimony that is contrary to this evidence.

I accept the evidence of the tenant that they did not receive the cheque. I weigh their evidence – primarily the letter from their son – against the evidence of the landlord. The landlord could only speak to what the owner told them regarding a reimbursement of that amount. This is not specific enough to outweigh the tenant's evidence. In the hearing, the landlord was not able to give the dollar amount of the compensation in question. I also find the timeline of

approximately two weeks – from May 12 to May 25 – a reasonable amount of time for a cheque to arrive to the tenant's forwarding address if it was mailed on May 12. I am satisfied the tenant did not receive the return of the security and pet deposits, and the evidence of the landlord here is not definitive on whether a cheque was in fact mailed out.

There is no evidence the landlord made a claim against the security deposit within the required 15-day time period as specified in the *Act*. The landlord present in the hearing stated they personally spoke to and advised the owner to send the amount back to the tenant. Whether that in fact happened is not established in the evidence.

I find on a balance of probabilities that the owner did not forward the returned deposit amounts to the tenant. This constitutes a breach of section 38(1); therefore, section 38(6) applies and the landlord must pay double the amount of the security deposit.

Conclusion

I order the landlord to pay the tenant the amount of \$1,800.00. This is double the security deposit and pet deposit amount total of \$900.00. I grant the tenant a monetary order for this amount. This monetary order may be filed in the Provincial Court (Small Claims) 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: July 7, 2020

Residential Tenancy Branch