



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit pursuant to s.38 of the *Residential Tenancy Act* and for the recovery of the filing fee pursuant to s.72 of the *Residential Tenancy Act*.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Both parties provided extensive documentary evidence. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issue to be Decided

Did the tenant provide the landlord with her forwarding address in writing? Did the landlord return the security deposit or apply to retain the security deposit in a timely manner? Is the tenant entitled to the return of double the security deposit? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started in February 2015 and ended on April 30, 2020. The monthly rent was \$1,300.00 due on the first of each month. At the start of the tenancy, the tenant paid a security deposit of \$650.00 and a pet deposit of \$650.00. The parties agreed that the landlord returned the pet deposit and is currently holding the security deposit of \$650.00. The landlord agreed that he received the tenant's forwarding address on March 31, 2020.

The parties attended an appointment to carry out a move out inspection on May 04, 2020. The tenant testified that upon her arrival the landlord had carried out the move out inspection and had a report in his hand. The tenant stated that due to the Pandemic and because she was taking care of a 90-year-old person, she did not want to risk entering the rental unit to do an inspection with the landlord and therefore she did not enter the rental unit.

The landlord informed the tenant of the discrepancies inside the unit and the amount he was claiming to restore the unit. The tenant stated that she did not agree with the landlord's report and therefore refused to sign it. The tenant stated that she was not given a copy of the report.

On the same day of the inspection, May 04, 2020, the tenant hand wrote a letter to the landlord with her forwarding address, an explanation of why she was not responsible for the damages the landlord was claiming and a request for the return of her deposit.

The landlord stated that on May 11, 2020 he made a deduction of \$493.25 from the security deposit of \$650.00 and mailed a cheque to the tenant in the amount of the balance of \$156.75. In a text message to the tenant, the landlord states "*Because you have been rude, disrespectful and continue to issue threats to me, I'm mailing you a cheque. Had you asked nicely I would have email the balance*" (reproduced as written). The tenant denied having received the cheque. The landlord agreed that the cheque was not cashed.

The tenant stated that the landlord wanted to make a deduction off the security deposit that she had not agreed to and therefore after the legislated time of 15 days had passed, the tenant made this application for the return of double the security deposit.

The landlord argued that the tenant did not participate in the move out inspection and therefore her entitlement to the return of the deposit was extinguished pursuant to s.36(1) of the *Residential Tenancy Act*.

Attempts to mediate a settlement between the parties failed as the parties could not agree on the amount of money that would change hands. The tenant agreed to drop her claim for double the deposit, if the landlord returned the base amount of the deposit (\$650.00) plus the filing fee (\$100.00) for a total of \$750.00. The landlord rejected the offer and countered at returning \$326.75 to the tenant, an offer which was rejected by the tenant. In the end the parties could not come to an agreement.

It must be noted that the landlord was very disruptive during the hearing and kept interrupting despite multiple warnings.

In order to conduct a smooth hearing, I gave the landlord a chance to testify, so that I could gather information later without interruption. Despite having been given the opportunity to speak, the landlord continued to interrupt and quote legislation repeatedly. The landlord also notified me of what my job entailed and recommended that I make a decision based on the *Residential Tenancy Act*.

Analysis

Consequences for tenant and landlord if report requirements not met

- 36** (1)The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a)the landlord complied with section 35 (2) [2 *opportunities for inspection*], and
 - (b)the tenant has not participated on either occasion.

Based on the testimony of both parties, I find that the landlord complied with section 35(2) of the *Residential Tenancy Act*. The tenant attended the unit on May 04, 2020 but did not participate in the inspection. The tenant stated that she had done her own inspection on April 30, 2020 and had recorded the condition of the unit. The tenant stated that the reason for not participating in the inspection with the landlord was due to the unusual circumstances brought on by the Pandemic.

Based on the above, I find that the tenant attended the rental unit at the appointed time to carry out the move out inspection and found that the landlord had already done so and had created a report. The tenant stated that she did not enter the rental unit due to the restrictions placed on citizens, by the Province to ensure the safety of all citizens especially vulnerable persons like seniors and those with compromised immunities.

I accept the tenant's testimony regarding the reasons she did not enter the rental unit because she stated that she had already done an inspection on her own on the last day of tenancy and had evidence to support her testimony. I also accept her reason for not participating due to the care she provides to a 90-year-old person. Under normal circumstances, the tenant would be required to participate in the inspection but due to the Pandemic is it reasonable for the tenant to attend but not participate.

Since the tenant showed up for the appointment, I find that her right to the return of the security deposit is not extinguished.

The parties agreed that immediately after the inspection, the parties discussed the damages that the landlord was seeking and were not able to come to an agreement.

Section 38(1) of the Act provides that the landlord must return the entire security deposit or keep all or a portion of the deposit with the tenant's approval. If the tenant is not in agreement with the landlord retaining all or a portion of the deposit, the landlord must apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

In this case, the tenant gave the landlord her forwarding address on March 31, 2020 and on May 04, 2020. The tenant testified that she did not agree to the landlord retaining any part of the deposit. I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the deposit.

The landlord currently holds \$650.00 for a security deposit. Accordingly, the landlord must return \$1,300.00 to the tenant. Since the tenant has proven her case, she is also entitled to the recovery of the filing fee of \$100.00.

Overall, the tenant has established a claim of \$1,400.00. I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

In regard to the landlord's claims relating to loss that he may have suffered; I am not able to hear or consider the landlord's claim during these proceedings as this hearing was convened solely to deal with the tenant's application. The landlord is at liberty to file his own application for damages against the tenant.

Conclusion

I grant the tenant a monetary order in the amount of **\$1,400.00**.

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: August 21, 2020

Residential Tenancy Branch