



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the "Application") on July 7, 2020 seeking an Order granting a refund of the security deposit, as well as a recovery of the filing fee for the hearing process.

This participatory hearing was convened after an agent of this office determined the correct information regarding the tenancy was not in place to proceed by a direct request proceeding. The agent informed the tenant of this on July 16, 2020. This generated a Notice of Hearing sent to the Applicant tenant.

The tenant forwarded this information to the landlord, including their prepared evidence. The landlord confirmed delivery of this information via registered mail.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the *Act*) on August 24, 2020. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions.

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*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

There is no documented tenancy agreement; however, the tenant gave testimony on the terms of the tenancy agreement and the landlord confirmed those details.

The agreement began via Facebook messages. The tenant provided a copy of those messages. On October 23, 2019, the tenant sent a message to the landlord that confirms details, after an initial visit to the unit. They stated: "I will take it for the first, have 650 + 325 for total of 975."

The landlord responded to say: "It's a month to month arrangement." and "You'll also receive receipts for rent and deposit." When asked by tenant if there was a "tenancy agreement and such to be signed" the landlord replied: "BC tenancy board recognizes verbal agreements of this manner." The parties then arranged for e-transfer of the funds.

In the hearing, the tenant stated the monthly rent was \$650.00 per month. They paid the security deposit of \$325.00 on October 23, 2019. The landlord confirmed this detail in the hearing.

The tenant is applying for a return of the security deposit. On their application, they stated: "[The landlord] refuses to return my security deposit for "not giving enough notice". This is in reference to the end of tenancy, when the tenant moved out "immediately" in response to a disagreement.

The tenant provided a copy of a document dated June 16, 2020. They stated: "I hereby gave you notice on the 5th of June that I would be moving with immediate effect." Additionally: "I am providing written notice of my intent to move along with my forwarding address. . . You have 15 days from receipt of this letter to return to me my full damage deposit of \$325."

The tenant also provided a form entitled 'Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit'. This shows the tenant gave the information to the landlord on June 16, 2020. A witness to that transaction signed the document on July 6, 2020.

The tenant reiterated that they gave the landlord verbal notice on June 5, 2020 that they would be leaving immediately. The landlord confirmed that the tenant moved out from the unit on June 6, 2020.

In the hearing the landlord stated that they notified the tenant of an immediate risk of danger involving an appliance. This led to a disagreement, and the landlord stated they advised the tenant that they could move out if they weren't amenable to the guideline on its use. The landlord confirmed that the tenant moved out from the unit on June 6, 2020. Regarding the document delivered June 16, 2020, the landlord stated this is "past one week's notice". This means the tenant left without proper notice, where a legal agreement requires 30 days' notice, based on a month-to-month tenancy.

Analysis

The *Act* section 44 sets out the ways a tenancy may end:

- 44 (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (d) the tenant vacates or abandons the rental unit;

The *Act* section 45 states the following:

- 45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

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 provided their forwarding address to the landlords on June 16, 2020. The evidence for this is the tenant's note giving their forwarding address. The landlord confirmed this in the hearing.

The landlord's position is that the tenant did not give a proper notice to end the tenancy. This is in terms of the timing, where the notice was less than one month in advance. I do not accept the landlord's submissions that improper notice to end a tenancy does not require the return of the security deposit.

I find the tenant ended the tenancy on June 6, 2020 when they vacated the unit. This is permitted by section 44(1)(d). In this case, the landlord had fifteen days from the June 6 end of tenancy to make a claim against the security deposit.

Similarly, occurring after this was the tenant providing their forwarding address on June 16, 2020. With regard to section 38(1), this is the later catalyst, that being "the date the landlord receives the tenant's forwarding address in writing." The landlord had fifteen days from this later date to make a claim against the security deposit.

In this hearing, there is no evidence the landlord made an application for dispute resolution claiming against the security deposit. Therefore, the landlord retaining the security deposit is not in line with the provisions of the *Act*. In either scenario above, the landlord was bound by the provisions of section 38(1).

I find the evidence shows the landlords received the tenant's forwarding address information on June 16, 2020 and did not subsequently make a claim to retain the deposit within the legislated timeframe of 15 days. In sum, I find the landlords retained the deposit after the tenancy ended. When provided with the tenant's address information, the landlords had the opportunity to register a claim to retain that deposit; however, there is no record that they did so.

I find the landlords did not return the deposit to the tenant as the *Act* requires. This constitutes a breach of section 38(1); therefore, section 38(6) applies and the landlords must pay double the amount of the security deposit. This is \$650.00.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee they paid for this application.

Conclusion

I order the landlord to pay the tenant the amount of \$750.00. 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: August 25, 2020

Residential Tenancy Branch