



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDCT FFT

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement 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 given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence. The landlord testified that she had attempted to serve the tenant with her evidentiary materials by way of registered mail to the forwarding address provided by the tenant, but the mail was returned to her. The tenant testified that he did not receive this package from the landlord. As the tenant did not receive the evidentiary materials and have an opportunity to review these documents prior to the hearing, the landlord's evidentiary materials were excluded for the purposes of this hearing.

Issues(s) to be Decided

Is the tenant entitled to the return of their security deposit?

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began on June 30, 2019, with monthly rent set at \$1,775.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$887.50 at the beginning of the tenancy, which the landlord still holds. Both parties confirmed in the hearing that the tenancy formally ended on July 31, 2020, as the tenant was to return his keys by that date to the landlord. This arrangement was confirmed on the move-out inspection report, which took place on July 24, 2020. The tenant provided sworn testimony that he had provided his forwarding address on the report, which was identical to the rental address, but which was forwarded to the tenant's new address through the postal service until November 21 or 22, 2020. The tenant agreed that the landlord may return his deposit by way of e-transfer to his email address.

The tenant applied for dispute resolution on August 2, 2020 requesting the return of a portion of his security deposit. The tenant consents to the landlord retaining \$262.50 of his security deposit, but is requesting the return of the remaining \$625.00. The landlord testified that she had attempted to return the \$625.00 by way of e-transfer on August 13, 2020, but the tenant rejected the transfer as he wanted to recover the \$100.00 paid for this application. The landlord confirmed that she consents to the return of \$625.00 to the tenant.

The tenant responded that he filed his application for dispute resolution as he believed that the landlord wanted to make claims against his deposit for repairs. He testified that the landlord did not attempt to return his deposit until after he filed his application.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the

tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "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."

In this case, I find it undisputed that the landlord did attempt to return the \$625.00 requested on August 13, 2020. I find that this tenancy had ended on July 31, 2020, which is the date the tenant was expected to have returned his keys to the landlord. I find that the landlord was required to return the tenant's security deposit within 15 days of the end of this tenancy, which was August 15, 2020. I find that the landlord complied with the *Act* by returning \$625.00 to the tenant on August 13, 2020, which was the remaining portion of the deposit after the deductions agreed to by the tenant. Although the tenant filed his application on August 2, 2020, I find this application to be premature as the landlord had until August 15, 2020 to fulfil her obligations. The landlord also agreed in the hearing to return to the tenant the \$625.00 requested. On this basis, I allow the tenant's monetary claim of \$625.00 for the return of his security deposit, which may be e-transferred to the tenant as confirmed in the hearing.

The tenant is also requesting the recovery of the \$100.00 filing fee for this application. The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I find that the landlord complied with the *Act* by returning the tenant's security deposit within the required 15 days, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$625.00 for the return of his security deposit. The security deposit may be returned by way of e-transfer to the tenant's email as confirmed by the tenant in the hearing.

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of 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.

The tenant's application to recover the filing fee is dismissed without leave to reapply.

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: November 23, 2020

Residential Tenancy Branch