



Dispute Resolution Services

Page: 1

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 August 13, 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 adjudicator of this officer determined the basic information about the tenancy itself was not in place to proceed by a direct request proceeding. The Adjudicator informed the tenant of this on August 26, 2020. This generated a Notice of Hearing sent to the Applicant tenant. The tenant then informed the landlord of this hearing. They served documentary evidence via email two days prior to the hearing.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on December 10, 2020. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions.

Preliminary Matter

Both parties prepared documentary evidence in advance, for consideration in the hearing. The tenant stated in the hearing they provided their documents to the landlord via email 2 days prior to the scheduled hearing on December 10. The landlord confirmed this in the hearing. When asked, the tenant confirmed they did not provide any paperwork or printed copies to the landlord ahead of time.

The landlord provided documentary evidence for this hearing. They emailed this information to the tenant on November 10, 2020.

The Residential Tenancy Branch has a formal set of Rules of Procedure in place to govern the hearing process. This is “to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.” Rule 2.5 specifies the documents that must be submitted with an Application for Dispute Resolution. This includes the Applicant’s prepared evidence. Rule 3.1 follows and specifies that “any other evidence submitted to the Residential Tenancy

Branch directly” must accompany the Notice of Dispute Resolution that a party sends to the other within three days of it being made available.

The tenant here did ensure their documents were provided to the Residential Tenancy Branch in line with Rule 10, in advance of that expedited hearing in August 2020. However, the information before me in this hearing is that the tenant did not follow the Rules of Procedure and did not provide their documentary evidence to the landlord when giving the hearing information to them.

This being the case, I am excluding the documentary evidence prepared by the tenant from my consideration below. While I will not review the tenant's documents, I do however still consider their oral testimony in the hearing which is direct evidence. Where there is a gap, I shall address that discrepancy in the information before me by weighing the direct testimony between the parties.

The landlord did prepare and provide their evidence with the tenant in a timely manner as per the Rules of Procedure. For this reason, I review and consider evidence provided by the landlord in my decision below.

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

Neither the landlord nor the tenant submitted a copy of a tenancy agreement for this hearing. The tenant stated the agreement was for a month-to-month tenancy. The rent amount was \$1,500 monthly. The tenant paid a security deposit amount of \$750. The tenant stated they signed a paper that set out the rent and security deposit amounts. The landlord claimed there was no such paper.

The tenancy ended with the landlord notice from the tenant in December 2019. An outside agency informed the landlord of this end of tenancy, then the tenant told the landlord personally about the end of tenancy.

The tenant moved out from the unit on “February 22 or 23” as stated in the hearing. The full month of February was paid. The landlord confirmed this date, saying a full month's rent offset

the approximately same timeframe at which the tenant moved in prior to the beginning of the tenancy in June 2019.

The landlord stated the “tenant just left and never dropped off the keys.” They received a text message from the tenant about “2 to 3 weeks later.” Their evidence contains an image of a text message dated March 3, 2020 wherein the tenant states: “I just have to give you my new address before I can do anything so it is [address]”.

The landlord stated there was no formal walk-through meeting at the time the tenant left. The landlord took issue with different areas of damage within the unit; this was particularly noticeable because the unit was brand new at the start of the tenancy. They gave the detail that the tenant tried to replace a cabinet door; however, the work done did not match to the original work. In the hearing, the tenant responded to this to state that scheduling a walk-through inspection meeting is the landlord's responsibility.

The landlord responded to the tenant's address message, asking the tenant to come around because the tenant owed money for damage to the unit. At that time the landlord stated to the tenant it was \$400, but later upon checking and getting estimates, the actual damage amount was “\$2,500” or “in excess of \$3,000.” The landlord sent copies of messages as part of their prepared evidence for this hearing.

The landlord stated in the hearing that they were still holding the tenant's security deposit; however, they did not apply for dispute resolution to claim against any part of the deposit. Additionally, there was no agreement between the parties for the landlord to retain any part of the deposit.

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 provided their forwarding address to the landlord on March 3, 2020. The evidence for this is the tenant's text message showing this. The landlord did not dispute this or show otherwise in the hearing. The message stands as evidence of the tenant providing a forwarding address to the landlord on that date.

I find the evidence shows the landlord received the tenant's forwarding address information on March 3, 2020 and did not subsequently make a claim to retain the deposit within that legislated timeframe of 15 days. In the hearing, the landlord verified they did not make a claim. In sum, I find the landlord retained the deposit for damages they discovered at the end of the tenancy. It is clear from the evidence that the landlord intended to keep the deposit to offset costs of damages; however, the actual condition of the unit is immaterial. When provided with the tenant's address information, the landlord had the opportunity to register a claim to retain that deposit; however, there is no record that they did so.

I find the landlord 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 \$1,500.

As the tenant were successful in this application, I find the tenant are 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 \$1,600. This is double the security deposit and pet deposit amount total of \$750 and \$100 for the Application filing fee. 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 *Act*.

Dated: December 11, 2020

Residential Tenancy Branch