



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for the return of the Tenant's \$1,250.00 security deposit that the Landlord is holding without cause; and to recover the \$100.00 cost of their Application filing fee.

The Landlord and an agent for the Tenant, M.L. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Agent and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and they confirmed this in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Should the security deposit be returned by the Landlord to the Tenant?
- Is the Tenant eligible for recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on February 28, 2020, and ran to May 31, 2020, with a monthly rent of \$2,500.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,250.00, and no pet damage deposit. They agreed that the Tenant moved out on May 30, 2020.

The Agent said he gave the Landlord the Tenant's forwarding address via email on May 11, 2020, but the Landlord denied that this was the case. The Agent pointed to a copy of an email he uploaded to the RTB and said he served on the Landlord. In this email dated May 11, 2020, the Agent emailed the Landlord the forwarding address to the email address the Landlord confirmed in the hearing. He also copied a real estate agent, and said:

I hope you have been settling in well into your new place. I'm writing this on behalf of my grandpa, [Tenant], regarding the last month's utility bill and the damage deposit of [rental unit address]. Please send the details of the utility bill to me via email so that we can pay it. Additionally, you can return the damage deposit cheque in full at the following address:

[forwarding address provided]

Let me know if you have any further questions.

Regards,
[Agent]

The Agent also submitted an RTB-41 form, which is a "Proof of Service, Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit". On this form it states that the Tenant's forwarding address was served on the Landlord by hand. However, the Agent also typed the following on the form:

I served the documents via email, as there was a ban [on] personal serving of documents at the time. I served the documents to the email address that I was

provided, and received verbal confirmation of the fact that the documents were received over a recorded phone call.

On the second page of this form, it states that [H.O.] observed [the Agent] given an email notice to [the Landlord]. The form is signed by [H.O.] and the Agent.

In the hearing, the Agent said:

There's no good faith negotiation re the security deposit. I had asked for it to be returned to us, and it had been months and we had not received anything, so therefore, we had to go through this process. So, it's a cut and dried matter, we didn't receive the CIR, nor the moving out report. I had served documents to best of my ability in the Covid pandemic and I contest the claim that the Landlord had not received the forwarding address. The email the Landlord sent to me was sent from the same email address, and there were phone calls back and forth regarding the security deposit and the matter was unresolved, and was unresolvable by myself.

The Landlord said:

He's saying that the move out only contact address we had was [the Agent's] phone number, and that's how . . . yes, he called me about he security deposit and we just talked on the phone. I talked to him, and talked to him about the condition and to come and have a look. I sent evidence to his [message app] to transfer. [The Tenant] cannot speak English very well and when [the Agent] asked about the return of the deposit, I talked about the condition of this house, and he said okay, can you send me the invoice. I put it all together, but it's more than the security deposit – I have to clean it and do a lot of stuff. I don't have any address from them. When I contacted the Agent, they don't pick up. First a week or two weeks, [the Tenant] was coming to the front door to pick up mail. I was calling [the Agent] and he's not answering. I went back and forth with him from a couple months ago. I didn't ask for an email.

The Agent said:

I had texted him my email on April 30 at 6:36 pm. Our house number that he has used to contact us in the past is the same. He did not call the number, the numbers that we gave him in the tenancy agreement were still active. Additionally, the Landlord had helped me arrange some garbage pickup

regarding our moving out, and that was done through people that he knows, and I had email correspondence with that person. So, if the Landlord had made goodwill efforts to find my address, he would have found it. His evidence is based on his not having received the address.

The Landlord said:

Most of the stuff is done between me and the Agent, because he's transferring all the information and documents or pictures. [The Tenant] was in China when we did the repairing and he cannot speak English. Our only connection was [the Agent].

The garbage they needed to move out, and I do respect the older man needs help, and his son asked me to get rid of a lot of stuff. I know a guy who grabs my stuff, and they took it away. They dealt with the garbage and not me.

I have pictures in evidence – the backyard – a lot of stuff was left at the garbage. I ordered another bin to make it empty. I was not asking for the Tenant's address, and I was contacting him by the phone.

The Tenant said:

I ask that the arbitrator not conflate these allegations of garbage left behind with the matter of not repaying the security deposit. The deposit was something that was never discussed properly, as the Landlord had said; the invoices were never sent to me, until much, much later, and I would like to stress that we vacated one day earlier at the Landlord's request.

The Landlord had mentioned being displeased about the carpets, and I said that's no problem, I can come by and clean it, but the Landlord was insistent on us leaving, as he wanted to move in that very night that we were moving out. I didn't know there had to be an inspection move out, and as you can see from my evidence that dealing with this later has not been in good faith. There were no attempts to learn my address, even though I had emailed it to him. I would like this matter to be resolved. It's been hanging around for a few months. It's not good for an old man to be worrying about the security deposit.

The Landlord said:

I would like to point out that I sent you the same email I sent to [the Agent], and more stuff, and [the Agent] knows about it. It was arranged with [the Tenant's] son; I tried to help them out, and I was trying to help an older man get to his new place. They decided to go.

I was trying to sanitize for Covid going on. I asked him if he was going to clean it out, but he said there was no time. I hadn't checked the crawl space until two days later. Maybe there's some stuff he's misunderstanding. I didn't know how or where to say this, but I do have evidence that I did or paid someone to do it. I want to keep the deposit; I spent more than I have to. I told [the Agent] that I would like to keep the deposit, and he said to send me the invoices. Before receiving the RTB package, I sent evidence and pictures to the Agent, and he said I could keep the deposit. I thought we could leave it as is, finish it up.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

I find on a balance of probabilities that the Agent provided the Landlord with the Tenant's forwarding address on May 11, 2020 in an email that was sent to the Landlord and also to [H.O.]. I find that the RTB-41 form has some inconsistency between whether the forwarding address was served in person or via email. However, I find on a balance of probabilities that the form did not have the option of sending the forwarding address by email; rather, that option arose, because of the state of emergency in the Province, caused by the pandemic. I find that the Agent provided sufficient evidence to establish on a balance of probabilities that he sent the Landlord the Tenant's forwarding address and requested the return of the security deposit in an email dated May 11, 2020.

Based on the evidence before me overall, I find that the Agent provided the Tenant's forwarding address to the Landlord via email on May 11, 2020, and the tenancy ended on May 30, 2020. Section 38(1) of the Act states the following about the connection between and relevance of these dates:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

According to section 38(1) of the Act, the Landlord was required to return the \$1,250.00 security deposit within fifteen days after May 30, 2020, namely by June 14, 2020, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Landlord has provided no evidence that they returned any amount or applied to the RTB to claim against the deposit. Therefore, I find the Landlord failed to comply with their obligations under section 38(1).

The Landlord said that he wanted to keep the security deposit, because of the damage and/or debris left behind by the Tenant that the Landlord had to clean up. However, a landlord must apply for dispute resolution in order to apply a security deposit to a damage claim, but this Landlord did not do so in this case; therefore, I find that the Landlord is not entitled by the Act to keep the security deposit.

Given that the Landlord failed to comply with the requirements of section 38(1), and pursuant to section 38(6)(b) of the Act, I find the Landlord must pay the Tenant double the amount of the security deposit. There is no interest payable on the security deposit. I, therefore, award the Tenant with \$2,500.00, pursuant to sections 38(6) and 67 of the Act. I also award the Tenant with recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act. I grant the Tenant a Monetary Order from the Landlord of **\$2,600.00**, pursuant to section 67 of the Act.

Conclusion

The Tenant is successful in his Application for the return of the security deposit from the Landlord. As the Landlord failed to fulfill their obligations under section 38(1) of the Act, and pursuant to section 38(6), I award the Tenant with the return of double the security deposit in the amount of \$2,500.00. I also award the Tenant with recovery of the \$100.00 Application filing fee.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$2,600.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: December 22, 2020

Residential Tenancy Branch