



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT

Introduction

On September 25, 2020 the tenant submitted an Application for Dispute Resolution (the “Application”). This was for compensation of monetary loss, and a return of the security deposit. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Act* on January 15, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The tenant attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The landlord did not attend the telephone conference call hearing.

To proceed with this hearing, I must be satisfied that the tenant made reasonable attempts to serve the landlord with the Notice of Dispute Resolution for this hearing. This means the tenant must provide proof that the document has been served at a verified address allowed under section 89 of the *Act*, and I must accept that evidence.

The tenant set out how they served this notice to the landlord via registered mail within the time limit specified on the Notice of Hearing. They presented that they sent registered mail: one to a business address, and the other to the landlord’s residential address. The latter required a land title search, and this piece of registered mail came back as unclaimed. The former mail package was shown as delivered by the tenant’s query of mail tracking information.

Based on the submissions of the tenant, I accept they properly served the notice of this hearing to the landlord in a manner complying with section 89(1)(c) of the *Act*. The hearing thus proceeded in the landlord’s absence.

Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit pursuant to section 38 of the *Act*?

Are the tenants entitled to recompense for monetary loss or other money owed, pursuant to section 67 of the *Act*?

Background and Evidence

I have reviewed all evidence and oral submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenant stated there was no documented tenancy agreement. Their stay in the rental unit began on December 7, 2017. This was on a month-to-month basis with the tenant advising each month that they wanted to extend the stay. They paid the damage deposit on December 7, 2017, along with the first \$900 rent amount, at the very beginning of the tenancy.

The tenancy ended on October 23, 2019. This was the result of the property owner not complying with local bylaws with respect to the age and state of repair of the building. They had notice of this in advance, verbally from the landlord. They also stated a notice from the landlord was posted on the door of their rental unit 14 days in advance.

The tenant made inquiries to the landlord about the amount of their security deposit. The landlord requested proof of the tenant's initial payment and specified this was to be by way of a cancelled cheque. The tenant provided proof with their bank transaction listing; they provided a copy of this in the evidence here. The deposit account history shows a \$1000 transfer to the landlord on December 7, 2017, and a \$420 transfer the following day. In the hearing, the tenant described this as a split-up of the initial security deposit amount and the first month rent.

This was the information they began showing to the landlord in March of 2020. After this, the landlord provided \$200 to the tenant on April 27, 2020. When the tenant visited the landlord on this date, the landlord specified that they would not provide any more of

the security deposit amount to the tenant, without a “cancelled cheque. The tenant stated the landlord’s response was: “I need a cancelled cheque for the rest.”

The tenant provided a forwarding address to the landlord on September 2, 2020 via registered mail. A tracking info sheet shows this piece of mail was delivered on September 4, 2020.

The tenant here claims \$600 for the security deposit amount. An advocate attending with the tenant clarified this amount is double the remainder of the amount withheld by the landlord. They provided that this double amount is what the *Act* specifies as allowable in these circumstances. A copy of the letter appears in the evidence, showing the tenant’s name and address. The tenant listed their amount for the security deposit at \$300 and made the formal request for its return. The tenant also advised of a 15-day time limit for the security deposit return from the landlord, citing section 38 of the *Act*.

The tenant also claims \$243 for a return of their overpayment of rent in October 2019. Dividing the total amount of rent by the number of days within the month of October results in this amount for the period October 23 to October 31. They left the rental unit on October 23, 2019 though they had paid the whole month’s rent at the beginning of October.

In their September 2, 2020 letter to the landlord, the tenant also made the request for this amount owing “for the remaining October rent.”

The landlord did not attend the hearing and provided no evidence in advance. As such, there is no evidence contrary to that of the evidence and testimony of the tenant.

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.

I find the tenant provided the forwarding address to the landlord on September 2, 2020. The landlord did not apply for dispute resolution within 15 days of receiving this forwarding address. I find there was no agreement that the landlord could retain any amount of the security deposit or pet damage deposit.

I find the landlord's actions constitute a breach of section 38 of the *Act*. The landlord must pay the tenants double the amount of the security and pet damage deposit, as per section 38(6) of the *Act*. This amount is \$600.

Additionally, I find the calculation of the tenant's overpayment from October 2019 rent is \$232. This is the full rent amount owing for the final 8 days, October 24 to 31. I so award this amount to the tenant.

Conclusion

I order the landlord to pay the tenants the amount of \$832 which includes \$600 for double the amount of the security and pet deposits and the \$232 rent amount. 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: January 15, 2021

Residential Tenancy Branch