



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD FFT

Introduction

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

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

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. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

Issues(s) to be Decided

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

Is the tenant entitled to a monetary award for the return of their security deposit?

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 January 15, 2015, with monthly rent set at \$1,300.00 at the end of the tenancy. The landlord had collected a security deposit in the amount of \$500.00 at the beginning of the tenancy. The tenant moved out on

September 30, 2020 after a Mutual Agreement was signed by both parties on July 31, 2020 that the tenancy would end on September 30, 2020 as the landlord had sold the home. Both parties confirmed that the landlord had sent the tenant a cheque dated October 4, 2020 in the amount of \$1,700.00, which was for a partial return of the tenant's security deposit in the amount of \$400.00 plus the required one month's rent for ending the tenancy due to the sale of the home.

Both parties confirmed that no move-in or move-out inspection report was completed for this tenancy. The landlord testified that both parties had a very good relationship. The landlord confirmed that they have not filed any applications for dispute resolution for this tenancy.

Both parties confirmed that there was an agreement that the tenant would be provided a incentive of \$1,300.00 for occupying the home until the end of September 2020. The landlord referred to this incentive as a "gift bonus" in his evidentiary materials. The landlord informed the tenant that this was important for insurance coverage, and required the tenant to stay until the end of September 2020. Both parties confirmed that this agreement was oral, and both parties had agreed to the terms of this oral agreement.

It was undisputed that the landlord withheld \$100.00 of the tenant's security deposit and the \$1,300.00 incentive at the end of the tenancy. The landlord testified that the reason was that the tenant failed to leave the home in reasonably clean and undamaged condition, which was a condition of the incentive and return of the security deposit. The landlord testified that they were also unhappy with the fact that the home was sold with the curtains, which were removed by the tenants.

The tenant testified that he did not give permission for the landlord to retain any portion of his security deposit. The tenant also testified that the \$1,300.00 was an incentive for him to remain in the rental unit for an additional month even though he had found new accommodation, and that he would not have stayed the additional month for any other reason as he had already found a new place to rent. The tenant does not dispute that the home showed signs of wear and tear, but testified that the condition of the home reflected the age of the home more than the tenant's failure to leave the home in reasonably clean and undamaged condition.

The tenant included a letter dated October 13, 2020 that was sent to the landlord requesting the \$1,300.00 incentive and the return of the remaining \$100.00 of his security deposit. The tenant provided his forwarding address in that letter to the

landlord. Both parties confirmed that the landlord is still in possession of the \$1,400.00. The tenant is requesting a monetary order for these amounts plus recovery of the filing fee for this 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, 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 if the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant.

I find that the tenant sent a letter to the landlord dated October 13, 2020, which included the request for the return of the remaining \$100.00 of his security deposit. I find that the tenant provided his forwarding address in that letter. In this case, I find that the landlord had not returned the tenant's security deposit in full within 15 days of receipt of that letter. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to the return of the remaining portion of his security deposit (\$100.00), as well as compensation equivalent to the value of the original deposit (\$500.00) for the landlord's failure to comply with the *Act*.

I find it undisputed that the landlord had offered the tenant a \$1,300.00 incentive to remain in the rental unit for the month of September 2020. I find it further undisputed that the tenant fulfilled their obligations in terms of the additional month of occupation. The landlord testified that the tenant failed to fulfill their obligation to return the rental unit in reasonably clean and undamaged condition, which was another condition of this incentive. I have considered the testimony of both parties, and it is clear that the landlord required that the tenant fulfill this second condition in order to collect the

incentive. It is undisputed that this was the reason why the landlord had withheld the incentive.

As noted above, the landlord had already collected a security deposit at the beginning of this tenancy, and had withheld \$100.00 of that deposit. The *Act* is clear on the obligations of the landlord in collecting a security deposit, including the requirement that the deposit must not exceed half of the monthly rent as stated in section 19 of the *Act*. Section 20 of the *Act* states that a landlord may not require that a security deposit be paid at any time other than when the landlord and tenant enter into the tenancy agreement. I find that by imposing a condition on the \$1,300.00 incentive that the tenant leave the home in reasonably clean and undamaged condition, the landlord is essentially requiring an additional security deposit to be paid and held by the landlord in case that the tenant does not comply with section 37 of the *Act*.

The *Residential Tenancy Act* provides by section 5 that:

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

I find that the landlord had already collected a security deposit from the tenant in the amount of \$500.00. I find the requirement of the tenant to fulfill their obligations under section 37 of the *Act* in order to collect the \$1,300.00 incentive to be an attempt by the landlord to contract outside of the *Act*. I find that labelling the \$1,300.00 as a “gift bonus” or incentive does not change the fact that the landlord required that the tenant fulfill their obligations under section 37 of the *Act* in order to qualify for the payment of this money, which is the purpose of the security deposit. For this reason, I find this condition to be inconsistent with the *Act* and is not enforceable. I accept the sworn testimony of the tenant that they had already found new accommodation, and stayed until September 30, 2020 with the understanding that they would be compensated \$1,300.00 for doing so. I find that the tenant had met their obligations under the agreement for the \$1,300.00 incentive as the tenant had remained in the rental unit for September 2020. Accordingly, I allow the tenant’s monetary claim for the \$1,300.00 owed to them.

As the tenant was successful with this application, I find that the tenant is also entitled to recover the filing fee from the landlord.

Conclusion

I issue a \$2,000.00 Monetary Order in the tenant's favour under the following terms which allows the tenant to recover the portion of the security deposit retained by the landlord, payment of the \$1,300.00 incentive owed to the tenant, plus a monetary award equivalent to the value of the deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. The tenant is also entitled to recover the cost of the filing fee for this application.

Item	Amount
Return of Remaining Security Deposit	\$100.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	500.00
Payment of \$1,300.00 incentive	1,300.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$2,000.00

The tenant is provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) 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.

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: February 23, 2021

Residential Tenancy Branch