



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GY&LIU CANADA HOLDING
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MNR MNSD FF
Tenant: MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on March 8, 2021. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord and the Tenant both attended the hearing. The Tenant confirmed receipt of the Landlord’s Notice of Dispute Resolution and initial evidence package on or around November 20, 2020. The Landlord stated they posted a second evidence package to the Tenant’s door on November 27, 2020, but the Tenant denied receiving this second package. Since the Landlord was unable to demonstrate, with any corroborating evidence, that they served this second evidence package to the Tenant, I find it is not admissible.

The Landlord confirmed receipt of the Tenant’s Notice of Dispute Resolution Proceeding, as well as a second package of evidence on March 1, 2021. The Landlord did not take issue with the service of any of those documents. I find the Tenant sufficiently served his application and evidence for the purposes of this hearing.

All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Tenant

- Is the Tenant entitled to the return of double the security deposit held by the Landlord?

Landlord

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

Both parties agree that:

- monthly rent was \$1,850.00 and was due on the first of the month.
- The tenant moved in sometime around November 8, 2016, and moved out on or around November 29, 2020.
- The Landlord still holds a security deposit in the amount of \$925.00
- The Tenant provided, and the Landlord received, the Tenant's forwarding address in writing on December 3, 2020.

Tenant's Application

The Tenant is seeking double his security deposit, because he feels the Landlord did not follow the Act, and has a history of not following the Act for other tenancies. The Tenant stated the Landlord should have returned his deposit right away, but never did.

Landlord's Application

The Landlord stated that the Tenant failed to pay rent for May, June, July, and August 2020. The Landlord stated that the Tenant was receiving a \$300.00 per month rent subsidy for those months, which the Landlord confirmed receiving, so this leaves \$1,550.00 in outstanding rent each of the 4 months. The Landlord stated that although 2 of the \$300.00 rent subsidies were received in May 2020, they only received 4 in total. More specifically, the Landlord stated they received 2 x \$300.00 rent subsidy payments in May, one in June, and one in July. Overall, the Landlord is seeking to recover \$6,200.00 for the above noted 4 months worth of unpaid rent.

The Tenant stated that the Landlord's amounts as listed on his "repayment plan" and on this application are incorrect. The Tenant stated that he only owes \$5,900.00 in unpaid rent, less the security deposit, not \$6,200.00 in unpaid rent. The Tenant pointed to a couple of emails and documents in his evidence to highlight what was owed.

More specifically, the Tenant presented emails from BC Housing, showing that the Landlord was given the following rent subsidies:

- 1) April Rent Subsidy – Paid on May 2, 2020
- 2) May Rent Subsidy – Paid on May 8, 2020
- 3) June Rent Subsidy – Paid on June 8, 2020
- 4) July Rent Subsidy – Paid on July 6, 2020
- 5) August Rent Subsidy – Paid on July 30, 2020

The Tenant stated that the Landlord was given 5 x \$300.00 subsidies. The Tenant did not refute that he failed to pay rent for May, June, July, and August, as the Landlord asserts. The Tenant appears to take issue with the fact that the Landlord is denying getting the 5th rent subsidy payment. The Tenant confirmed he paid April 2020 rent in full, and on time. The Landlord did not refute this.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

First, I turn to the Tenant's application for the return of double his security deposit.

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, both parties confirmed that the Tenant moved out of the rental unit on or around November 29, 2020, which I find reflects the end of the tenancy. The Landlord confirmed that he got the Tenant's forwarding address in writing on December 3, 2020.

The Landlord had already filed an application against the deposit, by the time the tenancy had ended, which entitled him to hold the deposit, pending the outcome of this

hearing. It is not necessary to consider whether the Landlord extinguished their right to claim against the deposit (by failing to complete all the condition inspections and reports in full compliance with the Act) since extinguishment only applies to claims for *damage* to the unit, not for unpaid rent. I find the Tenant is not entitled to double the security deposit, since the Landlord filed an application, prior to December 18, 2020, which would have been the last day (15 days after receipt of the forwarding address) he could have filed an application against the deposit, without breaching the Act. The return of the deposit will be further addressed below.

Next, I turn to the Landlord's application. Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent.

Based on the evidence and testimony from both parties, I find the Tenant did not pay rent for May, June, July, or August. The Tenant did not refute that he failed to pay for these amounts. Having reviewed the evidence on this matter, I note the timing of the rent subsidies are somewhat misleading. However, it appears BC Housing provided 5 rental subsidies in the amount of \$300.00, two of which were received in the month of May (one for April rent, one for May rent), followed by one in June, two in July (one for July rent, and one for August rent). I note the Tenant paid rent in full for April, so when the subsidy for April rent came, in early May, this led to a rent overpayment for April.

I find the Tenant did not pay rent for 4 months, May – August, which totals \$7,400.00. A subsidy was paid on the Tenant's behalf, as per the evidence provided, which totalled \$1,500.00 (5 payments). I find this leaves an amount owing of \$5,900.00.

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was successful with his application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant.

In summary, I grant the Landlord a monetary order based on the following:

Claim

Amount

Unpaid Rent	\$5,900.00
Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$925.00)
TOTAL:	\$5,075.00

Conclusion

The Landlord is granted a monetary order in the amount of **\$5,075.00**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: March 08, 2021

Residential Tenancy Branch