



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CYLCONE HOLDING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNSD, MNDCT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on November 24, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord's Agent attended the hearing at the appointed date and time. At the start of the hearing, the Landlord's Agent confirmed having received the Tenant's Application and documentary evidence. As such, I find that the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an 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 relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit, pursuant to section 38 of the *Act*?
2. Is the Tenant entitled to monetary compensation, pursuant to Section 67 of the *Act*?
3. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on September 1, 1997. Near the end of the tenancy, the Tenant paid rent in the amount of \$772.18 which was due on the first day of each month to the Landlord. The Tenant paid a security deposit in the amount of \$270.00. The tenancy ended on August 31, 2020.

The Tenant is claiming that the Landlord has not yet returned his security deposit in the amount of \$270.00. The Tenant stated that he provided the Landlord with his forwarding address along with his notice to end tenancy in writing on July 25, 2020 by placing it in the Landlord's mail slot. The Tenant stated that he has delivered his rent in the same mail slot throughout the entire tenancy.

The Landlord's Agent stated that she received the Tenant's notice to end tenancy, however, there was not forwarding address provided. The Tenant did not provide any documentary evidence in support of his forwarding address being provided to the Landlord.

The Tenant is also claiming \$2,000.00 in compensation as a result of the Landlord commencing work to paint the rental unit on August 25, 2020 before the end of his tenancy. The Tenant stated that he paid rent until August 31, 2020 therefore he does not feel as though the Landlord was entitled to commence the work on the rental unit.

The Landlord's Agent stated that the parties attended the rental unit on August 24, 2020 to conduct a condition inspection of the rental unit. The Landlord's Agent stated that the Tenant returned his keys to the Landlord's Agent on that date. The Tenant disagreed and stated that they completed an move out inspection on August 10, 2020 and that the Tenant was moved out of the rental unit on August 24, 2020 except for one small box, which he collected on August 25, 2020, at which point he saw the paint supplies in the rental unit.

Analysis

Based on the documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the Act requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the Act, and does not have authority under sections 38(3) or 38(4) of the Act to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit.

These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, the Tenant stated that he provided the Landlord with his forwarding address in writing on July 25, 2020. The Landlord's Agent stated that the Tenant did not provide the Landlord with his forwarding address. In this case, I find that the Tenant provided insufficient evidence to demonstrate that the Landlord was served with the Tenant's forwarding address, pursuant to Section 38 and 88 of the *Act*.

As the Tenant was unable to provide sufficient evidence to support that the Landlord was provided with his forwarding address in writing, and as both parties were present during the hearing, the Tenant's forwarding address was confirmed during the hearing. I informed the Landlord that they had 15 days from the date of the hearing, March 31, 2021, to either return the security deposit and interest to the Tenant in full, or deal with the security deposit in accordance with the *Act*.

The Tenant is also claiming for compensation in the amount of \$2,000.00. In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

In this case, the Tenant stated that he had all of his possession moved out of the rental unit on August 24, 2020 and returned to the rental unit on August 25, 2020 to collect one last item at which point he found that the Landlord has already began to paint the rental unit. The Landlord's Agent stated that the parties completed a move out

inspection of the rental unit and that the Tenant returned his keys to the Landlord on August 24, 2020.

I find that it is more likely than not that the Tenant moved out of the rental unit early on August 24, 2020 despite paying rent until the end of August 2020. I find that that Tenant provided insufficient evidence to demonstrate that they suffered a loss as a result of the Landlord entering the rental unit to commence painting after the Tenant had moved out all of his belongings except for one item. As such, I dismiss this claim without leave to reapply.

As the Tenant was unsuccessful with their Application, I find they are not entitled to the return of the filing fee.

Conclusion

The Tenant's forwarding address was confirmed during the hearing, and the Landlord was informed that they had 15 days from the date of the hearing, until March 31, 2021 to either return the security deposit to the Tenant in full, or deal with the security deposit in accordance with the *Act*.

The Tenant's claim for monetary compensation and for the return of the filing fee is dismissed without leave to reapply.

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 16, 2021

Residential Tenancy Branch