



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNSD, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 16, 2020 (the "Application"). The Tenant applied as follows:

- For compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property
- For return of the security deposit
- For reimbursement for the filing fee

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant. The Tenant provided affirmed testimony.

The Tenant withdrew the request for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property as it did not apply. The Tenant sought double the security deposit at the hearing.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenant testified that the hearing package was sent to the Landlord by registered mail prior to February 02, 2021. The Tenant testified that she obtained the Landlord's address from an internet search; however, she had also been to the Landlord's address so could confirm the internet search was correct. The Tenant testified that she sent her evidence separately February 02, 2021 by regular mail to the Landlord's address.

The Tenant testified that she received the Landlord's evidence for this hearing.

Based on the undisputed testimony of the Tenant, I am satisfied the hearing package and evidence were served on the Landlord in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”). The Landlord is deemed to have received the hearing package and evidence five days after mailing pursuant to section 90(a) of the *Act*.

The Tenant did not know when the hearing package was sent to the Landlord other than that it was sent prior to February 02, 2021. The Landlord submitted evidence for this hearing on January 07, 2021. Given this, I am satisfied the Landlord received the hearing package on or before January 07, 2021. Although I am not satisfied the Tenant complied with rule 3.1 of the Rules of Procedure (the “Rules”) in relation to the timing of service of the hearing package, I am satisfied the hearing package was served in sufficient time to allow the Landlord to prepare for, and appear at, the hearing.

I am satisfied based on the undisputed testimony of the Tenant that the evidence was sent to the Landlord on February 02, 2021. Pursuant to section 90(a) of the *Act*, the Landlord is deemed to have received the evidence February 07, 2021, a month prior to the hearing. I am satisfied the Tenant complied with rule 3.14 of the Rules in relation to the timing of service of the evidence.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered the Tenant’s documentary evidence and oral testimony. I have only referred to the evidence I find relevant in this decision.

Rule 7.4 of the Rules states:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party’s agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

I have not considered the Landlord’s evidence, other than the written tenancy agreement, given the Landlord did not attend the hearing to present the evidence. I have considered the written tenancy agreement because the Tenant referred to it during the hearing.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant testified that the written tenancy agreement submitted by the Landlord is accurate. The tenancy started April 01, 2020 and was for a fixed term ending March 31, 2021. The Tenant paid a \$975.00 security deposit.

The tenancy agreement shows there was a pet damage deposit; however, the Tenant testified that there was no pet damage deposit paid.

The Tenant further testified as follows.

The tenancy ended October 30, 2020.

She provided the Landlord a forwarding address in writing in person on October 30, 2020. A copy of the forwarding address provided is in evidence.

The Landlord did not have an outstanding monetary order against her at the end of the tenancy.

She did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The Landlord did not apply to the RTB to keep the security deposit.

The Landlord still holds the security deposit.

She participated in a move-in inspection with the Landlord.

The parties did a move-out inspection; however, no Condition Inspection Report was completed.

Analysis

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

I accept the undisputed testimony of the Tenant and based on it, as well as the documentary evidence referred to, I find the following.

The tenancy ended October 30, 2020.

The Tenant's forwarding address was provided to the Landlord in writing on October 30, 2020.

October 30, 2020 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from October 30, 2020 to repay the security deposit in full or file a claim with the RTB against the security deposit.

The Landlord did not repay the security deposit or file a claim with the RTB against the security deposit within 15 days of October 30, 2020. Therefore, the Landlord failed to comply with section 38(1) of the *Act*.

Sections 38(2) to 38(4) of the *Act* state:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...

The Tenant participated in a move-in and move-out inspection with the Landlord and therefore did not extinguish her rights in relation to the security deposit. Section 38(2) of the *Act* does not apply.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. Section 38(3) of the *Act* does not apply.

The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. Section 38(4) of the *Act* does not apply.

Given the above, I find the Landlord failed to comply with section 38(1) of the *Act* in relation to the security deposit and that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply. Therefore, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenant pursuant to section 38(6) of the *Act*.

The Landlord must return \$1,950.00 to the Tenant. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

As the Tenant was successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$2,050.00 and I issue the Tenant a Monetary Order for this amount.

Conclusion

The Tenant is issued a Monetary Order for \$2,050.00. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the 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 *Act*.

Dated: March 16, 2021

Residential Tenancy Branch