



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

On November 23, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing; however, the Landlord did not make an appearance at any point during the 18-minute teleconference. All parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail on December 5, 2020 (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that this package was signed for and accepted by the Landlord on December 8, 2020. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Notice of Hearing and evidence package. Furthermore, as the Tenant’s evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit?
- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on September 1, 2020 and that the tenancy ended on or around November 15, 2020 when he gave up vacant possession of the rental unit. Rent was established at \$750.00 per month and it was due on the first day of each month. A copy of the written tenancy agreement was submitted as documentary evidence.

He stated that he rented one of three bedrooms on the property; however, this bedroom was not designated with a number. In addition, he stated that he shared a kitchen with the Landlord, but he was not certain if this person owned the property or if she was herself a tenant.

He also stated that he never provided the Landlord with his forwarding address in writing until he served this Notice of Hearing package to her.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 4(c) of the *Act* states that the *Act* does not apply to living accommodation in which the Tenant shares bathroom or kitchen facilities with the owner of that accommodation. While the Tenant was not sure if this person owned the rental unit, both parties are cautioned that if she is an owner of the property, and if she did share the kitchen or bathroom with the Tenant, then the *Act* will not have jurisdiction over this issue. As the Tenant has not made any submissions on jurisdiction, I have not made any findings with respect to this issue.

However, if this is a tenancy covered under the jurisdiction of the *Act*, Section 38(1) of the *Act* requires the 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 in full 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 pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

In this instance, as the Tenant has not provided a forwarding address in writing to the Landlord prior to making this Application, this Application is premature.

Therefore, the Landlord is put on notice that the Tenant's new forwarding address is noted on the first page of this Decision. If she believes this tenancy falls under the jurisdiction of the *Act*, she must deal with the security deposit in accordance with Section 38. The Landlord is deemed to have received this Decision 5 days after the date it was written and will have 15 days from that date to deal with the deposit. If the Landlord does not deal with the security deposit pursuant to Section 38 of the *Act* within 15 days of being deemed to have received this Decision, the Tenant can then apply for double the deposit, pursuant to the *Act*. Jurisdiction under the *Act* with regard to this tenancy will likely be discussed at a future hearing should either party apply.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on my findings above, I dismiss the Tenant's Application with 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 15, 2021

Residential Tenancy Branch