



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of the security deposit - Section 38;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord states that it only received the Tenant’s hearing package a week or so before the hearing. The Landlord states that although the package was sent to the Landlord’s address for service the Landlord had moved from that address.

Section 89(1)(c) of the Act provides that an application for dispute resolution must be given, if the person is a landlord, to the address at which the person carries on business as a landlord. Given the undisputed evidence that the tenancy agreement set out the Landlord’s address for service, that the Tenant sent the package to that address and without any evidence that the Landlord informed the Tenant that this address had changed, I find that the Tenant served the package as required by the Act. If the Landlord received the package late because the Landlord moved addresses without informing the Tenant, it was at the Landlord’s own peril. As the Landlord did not

indicate that it required more time to respond, and I note that the Landlord did provide evidence for this dispute, the hearing continued.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on May 1, 2019 and ended on January 1, 2021. The tenancy agreement was signed on April 26, 2019 setting out a monthly rental amount of \$1,220.00 payable on the first day of each month. At the outset of the tenancy the Landlord collected \$610.00 as a security deposit and \$610.00 as a pet deposit. The Tenant set its forwarding address to the Landlord by registered mail on January 17, 2021. The Landlord returned \$610.00 to the Tenant and retained the remaining \$610.00 due to damages to the unit. The Landlord did not make an application to claim against the security deposit. No move-in or move-out inspection was offered by the Landlord or completed by the Parties.

The Tenant claims return of double the security deposit. The Landlord argues that the Tenant did not set out in its application that it was applying for return of double the security deposit.

The Tenant states that the unit was originally listed for a monthly rent of \$1,175.00 and said nothing about parking costs. The Tenant states that the Landlord was not present when the Tenant viewed the unit and did not attend the viewing. The Tenant states that the previous tenant showed the Tenant the unit and indicated that parking was included with the unit. The Tenant states that when the Landlord later presented the tenancy agreement to the Tenant the Landlord informed the Tenant that if parking were required

the rent would increase by \$45.00 per month for a monthly rent of \$1,220.00. The Tenant states that this extra cost was given to the Tenant at the last moment and the Tenant felt pressured to agree to the extra amount as it was important for the Tenant to have secured parking. The Tenant claims return of the extra monthly amount of \$45.00 for a total amount of \$360.00.

The Landlord states that no discussions were ever held with the Tenant about parking costs leading up to the signing of the agreement and agrees that the Tenant was informed of the extra parking cost at the last minute. The Landlord argues that the Landlord did not have to provide the parking spot and it could have been rented to someone else. The Landlord agrees that they were not present when the unit was shown as the Landlord arrived 15 to 20 minutes late for the showing and the Tenant had already left. The Landlord states that the previous tenant showed the unit on their own and never mentioned anything to the Landlord about the parking space. The Landlord states that the Tenant was informed that street parking was available. The Tenant states that the Landlord never attended the unit at any time on the date of the showing and that the Tenant knows this as the Tenant has been in communication with the previous tenant about this dispute.

The Tenant states that the tenancy agreement did not include any reference to strata rules. The Tenant states that they had to pay \$100.00 as a move-out fee and the Tenant claims return of this amount. The Landlord states that the Tenant was verbally informed of the move-out fee when the tenancy agreement was signed. The Landlord confirms that the Tenant was not given any copy of the Strata Rules. The Landlord states that it did not add the requirement for the Tenant to comply with the Strata Rules into the written tenancy agreement as the Landlord did not know they had to do this.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the

landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing. Based on the undisputed evidence that the Landlord received the Tenant's forwarding address but only returned half of the collected deposits, as the Landlord did not make an application to claim retention of any of the deposits, and as the Tenant not waive its right to return of double the deposits, I find that the Landlord must now pay the Tenant double the combined security and pet deposit plus zero interest of **\$2,440.00**. Deducting the **\$610.00** already returned leaves **\$1,830.00** remaining payable to the Tenant.

Section 6(3)(b) of the Act provides that a term of a tenancy agreement is not enforceable if the term is unconscionable. Given the undisputed evidence that the unit was listed for rent of \$1,175.00, that the advertisement did not set out that parking was not included, that the Landlord allowed a 3rd party to show the unit, that the 3rd party indicated that the unit was provided with parking, and that the Landlord, at the last minute, informed the Tenant that parking was only included with a rental increase of \$45.00., I find that in the circumstances the increase of the rent was unconscionable. The Tenant is therefore entitled to return of **\$360.00**.

The tenancy agreement does not include any reference to strata rules or move-out fees and based on the Landlord's evidence that the Tenant was not given a copy of the Strata Rules, I find that evidence of an oral agreement for an additional term is insufficient to establish the Tenant's requirement to pay a move-out Strata fee. For this reason, I find that the Tenant is entitled to return of the **\$100.00** move-out fee.

As the Tenant has been successful with its claims, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,390.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,390.00**. If necessary, this order may be filed in the Small Claims 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: June 09, 2021

Residential Tenancy Branch