



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 dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to obtain a return of all of the security deposit (\$885.00) pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$292.15 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Service of Evidence

The tenant testified that he served the landlord with the notice of dispute resolution hearing form and supporting evidence by registered mail. He sent the registered mail to the landlord's address for service listed on the tenancy agreement. The landlord testified that she no longer resides at that address and did not receive this mailing. The tenancy ended in April 2019. The tenant testified he later emailed the notice of dispute resolution hearing form to the landlord, which the landlord acknowledged receiving, but did not email her any of his documentary evidence.

The landlord did not submit any documentary evidence in response to the tenant's application.

Section 89(1)(c) of the Act address service by registered mail. It allows a party to be served as follows:

- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

The landlord neither resides at the address listed on the tenancy agreement, nor carries on business there. As such, I find that she has not been served with the tenant's evidence package in accordance with the Act. In light of the amount of time that has

passed since the tenancy ended, I decline to deem that service of these documents has occurred.

At the hearing, both parties expressed a desire to proceed with the hearing today, rather than adjourning the hearing so that each may serve the other with evidence they would rely on at the hearing. Both were prepared to proceed with the hearing and have it be determined on oral testimony only. The parties consented to the admission of the tenancy agreement and its addendum into evidence.

Accordingly, I exclude all documents provided by the tenant from evidence, except for the tenancy agreement and attached addendum.

Preliminary Issue – Withdrawal of Portion of Claim

Prior to the hearing, the parties came to an agreement regarding the tenant's monetary claim for \$292.15. As such, the tenant withdrew the portion of his application.

The balance of this decision will address the tenant's application for the return of the security deposit and the filing fee.

Issues to be Decided

Is the tenant entitled to:

- 1) the return of his security deposit; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting May 4, 2018 and ending May 4, 2019. Monthly rent was \$1,770. The tenant paid the landlord a security deposit of \$885 at the start of the tenancy, which the landlord continues to hold in trust for the tenant. The tenancy agreement contains an addendum with the following term:

The tenant should write the landlord two months before the contract end date to express wishes to renew or end the contract.

The parties conducted a move-in inspection at the start of the tenancy. The parties did not conduct a move-out inspection at the end of the tenancy.

The tenant testified that on March 4, 2019, the landlord emailed him to remind him of the requirement in the addendum to give two months' notice to end the tenancy. He testified he replied that same day stating "I will not be renewing the contract". He testified that the landlord replied to advise him that he would need to have the carpets cleaned prior to move out and that she would arrange to have the rental unit shown to new tenants in April 2019. The parties did not discuss the matter of the tenancy ending again until April 25, 2019, when the tenant advised the landlord that he would be moving out of the country on April 30, 2019, prior to the end of his term, and asked to do the move-out inspection that morning before his flight (which was in the evening).

The landlord did not attend the rental unit on this date to do the inspection and did not propose any alternate time for him to do it. She testified that she was not in the country at the time and, had she been given proper notice of the tenant's intention to end the tenancy, she would have arranged to be in the country at the time the tenancy ended. She testified that the March 4, 2019 email from the tenant was not sufficient to give notice that the tenant would not be continuing the tenancy after the end date.

The tenant testified that the landlord conducted an inspection, in his absence, on June 11, 2019, and emailed him a copy of the inspection report for his signature. He testified it did not contain reference to any damage.

The landlord testified that she could not recall if she completed a move out inspection report or not. She testified that when the next tenant moved in (in June 2019) that tenant reported that the rental unit had not been properly cleaned by the tenant, and that the landlord had to pay for the rental unit to be cleaned.

The tenant testified that, to date, he has not provided the landlord with any forwarding address. He testified that on September 7, 2019, he emailed the landlord asking for the security deposit to be returned and that the landlord replied on October 18, 2019 via email. She told the tenant that she was out of the country but would return in February, at which time she would "wire" the security deposit to his bank account.

The tenant testified he emailed the landlord on February 4, 2020 asking her to wire him the deposit, and that the landlord replied on February 5, 2020 writing, "I can wire the deposit and reimbursement today. Will you email me your account number?" The tenant provided his account number via email the same day. The tenant testified that the landlord emailed him on February 10, 2020 asking him to call (she included a telephone number) and stated that she would send him a cheque.

The tenant testified he called the number, but his call was unanswered. He testified that he emailed the landlord advising her of this on February 17, 2020 advising her of this and asked if she had missed any calls. He testified that the landlord replied that same day and gave him new phone number to call.

The landlord agreed with the tenant's testimony up to this point. She added that the tenant had not provided her with sufficient banking information to be able to wire transfer the funds. She did not deny that she asked for the tenant's "account number" when she suggested that she would wire him the funds.

The landlord disagreed with the following portion of the tenant's testimony.

The tenant testified that some time between February 17 and 24, 2020 he spoke with the landlord on the phone, and she advised him that she does not have to return the security deposit to him because he had not given her a forwarding address. He testified that he asked her to provide him with her basis for such a position, and that, on February 24, 2020, she emailed him section 39 of the Act, which states:

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The landlord denied that she had any communication with the tenant following her February 17, 2020 email until August 2020. She denied speaking to him on the phone or advising him of section 39 of the Act. She stated that she did not become aware of that provision of the Act until after the tenant filed this application.

The tenant argued that section 39 of the Act should not apply because he had an agreement with the landlord that she would return the security deposit to him via wire transfer.

The landlord argued that section 39 of the Act is clear, and that the tenant failed to provide her with his forwarding address within one year of the tenancy ending. As such, she is entitled to keep the security deposit.

Analysis

Section 38(1) of the Act states:

Return of security deposit and pet damage deposit

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The obligation for the landlord to return the security deposit after a tenancy ends only arises only upon receipt of the tenant's forwarding address. Without the provision of the forwarding address, the landlord is under no obligation to return the security deposit.

However, based on the testimony of the parties, it is obvious that the parties were engaged in discussions about returning the security deposit, and that an attempt was made to do so (via wire transfer).

I find it curious that, if there was insufficient information for the landlord to return the security deposit to the tenant via wire transfer, that she did not ask for that additional information, rather than propose a different method to return the security deposit (cheque). Furthermore, it is not disputed that the landlord only asked for the tenant's "account number", when requesting information for a wire transfer. The parties agree that this is what the tenant supplied her. I find that, by not asking for sufficient information to complete the wire transfer, and then not advising the tenant that she did not have sufficient information, the landlord is responsible for the security deposit not being returned by wire transfer.

I accept the tenant's testimony that he attempted to call the landlord multiple times and spoke with her on sometime between February 17 and 24, 2020. I do not find the landlord's testimony that, after she sent the February 17, 2020 email, she did not communicate with the tenant until August 2020 to be credible. The tenant was diligently following up on the return of the security deposit throughout the month of February 2020, sending multiple emails and making phone calls. It makes little sense that, after being provided with a new phone number for the landlord that he would have simply stopped all communication without explanation. I find it more likely than not that he spoke with the landlord after receiving her February 17, 2021 email, and that something she said during this call caused him to cease pursuing the return of the security deposit. I accept the tenant's testimony that she told him she would not return the security deposit because he had not provided her with his forwarding address.

I find that the landlord's actions relating to the return of the security deposit amount to her stringing the tenant along, giving him the impression that she would return the security deposit to him within one year of the tenancy ending. Her indications that she would return the security deposit to the tenant on October 18, 2019, February 5, 2020, and February 10, 2020, had the effect of "running out the clock" on the tenant's window to provide the forwarding address to the tenant. Her advising him that she would not return the security deposit because he had not provided the forwarding address had a further chilling effect on the tenant's efforts to obtain the return of the security deposit.

As such, decline to find that the tenant's right to the return of the security deposit was extinguished due to his failure to provide the landlord with his forwarding address within one year after the end of the tenancy.

Accordingly, pursuant to section 62(3) of the Act, I order that the landlord pay the tenant \$885, representing the return of the return the security deposit.

Pursuant to section 72(1) of the Act, as the tenant has been successful in the application, he may recover their filing fee from the landlord.

Conclusion

Pursuant to sections 62 and 72 of the Act, I order that the landlord pay the tenant \$985, representing the return of the security deposit and reimbursement of the filing fee.

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: August 18, 2021

Residential Tenancy Branch