



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD, MNDCT

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67;
- a Monetary Order for damage or compensation under the *Act*, 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.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

The tenant testified that the landlord was served with the tenant's application for dispute resolution via xpress post on April 8, 2021. A receipt for same was entered into evidence. The landlord testified that she received the tenant's application for dispute resolution in early April 2021. I find that the landlord was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*, because the landlord confirmed receipt of the above package.

Both parties confirmed receipt of the other's evidence. I find that both parties' evidence was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*.

Pre-liminary Issue- Amendment

The tenant used the shortened version of the landlord's first name when naming the landlord on this application for dispute resolution. In the hearing the landlord provided me with the correct spelling of the landlord's legal first name. Pursuant to section 64 of the *Act*, I amend the tenant's application to state the landlord's legal first name.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2019 and ended on October 31, 2019. This was originally a fixed term tenancy set to end on July 1, 2020. Monthly rent in the amount of \$1,800.00 was payable on the first day of each month. A security deposit of \$450.00 was paid by the tenant to the co-tenant, who is not named on this application for dispute resolution. The co-tenant paid the landlord the \$450.00 security deposit. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenant ended the fixed term tenancy early. The tenant testified that sometime after she applied for dispute resolution, she mailed the landlord her forwarding address via regular mail but did not recall when. No proof of service documents establishing same were entered into evidence. The landlord testified that she did not receive the tenant's forwarding address in writing and the tenant's forwarding address was only provided on the tenant's application for dispute resolution.

Both parties agree that the landlord did not return the tenant's security deposit at the end of this tenancy. The landlord testified that she kept the security deposit because the tenant broke the fixed term lease, and the tenancy agreement states that if the tenant breaks the lease the security deposit will not be returned. The tenancy agreement is RTB form 1. Next to section 4.A. which states that the tenant is required to pay a security deposit of \$450.00, the landlord has handwritten an asterisk and a notation which states: "To be used as unpaid rent if tenant leaves without notice". The notation is initialled by the landlord and both tenants.

The tenant testified that the landlord was not permitted to keep her security deposit and is seeking its return.

The tenant testified that cable and internet were included in the rent but the landlord charged her \$40.00 per month for three months for cable and internet. The tenant testified that she is seeking the landlord to refund her the \$120.00 paid for cable and internet. The tenant entered into evidence bank records evidencing the \$120.00 paid by the tenant to the landlord. The landlord did not dispute that the tenant paid \$120.00 for cable and internet during the tenancy.

The landlord testified that she had a verbal agreement with the tenants that she would pay \$80.00 per month for the cable and internet and that the tenants would each pay \$40.00 per month. The tenant testified that this was discussed by not agreed too. The landlord entered into evidence a letter from the co-tenant not named in this application for dispute resolution which supports the landlord's above testimony. The letter from the co-tenant shows that the relationship between the co-tenants was acrimonious.

The tenancy agreement signed by both parties' states that cable and internet are included in the rent.

Analysis

Section 88 of the *Act* sets out how documents such as forwarding addresses are to be served:

All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(a) by leaving a copy with the person;

- (b)if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c)by sending a copy by ordinary mail or 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;
- (d)if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e)by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f)by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g)by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h)by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j)by any other means of service prescribed in the regulations.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The tenant testified that she served the landlord with her forwarding address via regular mail sometime after applying for dispute resolution. No documents proving this mailing were entered into evidence and the landlord testified that she did not receive the tenant's forwarding address in writing. Based on the above, I find that the tenant has not proved that she served the landlord with her forwarding address, in accordance with section 88 of the *Act*.

Section 38(1) of the *Act* states:

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.

Section 38(1) of the *Act* states that the landlord is required to return the security deposit within 15 days of receipt of the tenant's forwarding in writing. As the tenant has not proved that she served the landlord with her forwarding address, the landlord is not yet required to return the tenant's security deposit.

A forwarding address only provided by the tenant on the application for dispute resolution form does not meet the requirement of a separate written notice as set out in section 38 of the *Act*. The tenant's application for the return of the security deposit is therefore dismissed with leave to reapply. Leave to reapply is not an extension of any limitation period. Should the tenant wish to make this application again in the future, the tenant must serve the landlord with her forwarding address in writing and be prepared to prove service as set out in section 88 of the *Act*.

The landlord testified that the tenant verbally agreed to pay for cable and internet in the amount of \$40.00 per month. The landlord entered into evidence a signed letter from the co-tenant confirming same. The tenancy agreement states that cable and internet are included in rent. Based on the tenancy agreement, that was signed by both parties, I find that cable and internet were included in the rent. I find the signed tenancy agreement has significantly more weight than the signed statement of the co-tenant who had an acrimonious relationship with the tenant.

As the cable and internet were included in the rent, the landlord was not permitted to charge the tenant for those services. I find that the tenant is entitled to a monetary order in the amount of \$120.00 for monies paid by the tenant for cable and internet during the tenancy.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$220.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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 *Residential Tenancy Act*.

Dated: August 31, 2021

Residential Tenancy Branch