



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDCT

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 or a portion of his security deposit pursuant to section 38; and
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's application. The tenant confirmed receipt of the landlord's evidence for this hearing. In accordance with section 88 of the *Act*, I find the tenant duly served with the landlord's evidence package. The tenant did not submit any written evidence for this hearing.

Issues(s) to be Decided

Is the tenant entitled to the return of their security deposit?

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy began on December 1, 2017, with monthly rent was initially set at \$1,750.00, payable on the first of the month. The rent was set at \$1,793.25 at the end of the tenancy. The tenant testified that a security deposit of \$1,750.00 was collected for this tenancy, while the landlord testified that a security deposit of \$875.00 was collected, and still held by the landlord. The landlord submits that they had obtained an Order of Possession on June 19, 2019, which ordered the tenant and any other occupants to give peaceful and vacant possession within two days of being served the Order. The landlord testified that they had to obtain a Writ of Possession as the tenant did not give peaceful vacant possession to the landlord as ordered. The landlord submitted a copy of the Writ of Possession dated June 24, 2019 as well as an invoice for the services of the bailiff. The copy of the Writ of Possession is signed by the bailiff noting that the Writ of Possession was executed June 27, 2019.

The tenant filed this application for the return of their security deposit plus compensation under section 38 of the Act for the failure of the landlord to return their security deposit. The tenant is also seeking reimbursement of the rent for the period of June 25, 2019 through to June 30, 2019 as they were unable to continue this tenancy. Both parties confirmed that the tenant provided a forwarding address to the landlord on January 27, 2020.

The landlord testified that the landlord had only collected the standard security deposit, which was fifty percent of the rent. As per the June 17, 2019 decision, the landlord was given permission by the Arbitrator to keep \$100.00 in order to recover the filing fee for that application. The landlord testified that they had kept the remainder of the tenant's deposit as they had suffered significant losses due to this tenancy, as shown by the evidence submitted. The landlord confirmed that the tenant did not consent to them keeping the deposit, nor did the landlord file an application to keep the deposit.

The landlord also disputes the reimbursement of the rent as the tenant did not vacate the rental unit peacefully after being ordered to do so. The landlord testified that the tenancy had only ended after the tenant was removed for failing to abide by the Order of Possession.

Analysis

Section 38(1) of the *Act* requires a 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 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 return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "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."

In consideration of the evidence and testimony before me, I find that the tenant has failed to establish that a security deposit of \$1,750.00 was paid to the landlord. As noted in section 2 of the Residential Tenancy Regulation Schedule, "the security deposit and pet damage deposit must each not exceed one half of the monthly rent payable for the residential property". In light of the disputed testimony, the burden of proof falls on the applicant to support their claim. On a balance of probabilities, and in the absence of any supporting testimony otherwise, I find that the landlord had collected the standard security deposit of half of the monthly rent at the time, which was \$875.00. The landlord was allowed to keep \$100.00 of the deposit, and still retains the remaining \$775.00.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application and calculation of applicable monetary awards:

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;*
- *if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;*

- *if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

In determining the amount of the deposit that will be doubled, the following are excluded from the calculation:

- *any arbitrator's monetary order outstanding at the end of the tenancy;*
- *any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit(see example B below);*
- *if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.*

In this case, although the landlord was given permission by an Arbitrator to retain \$100.00 of the deposit, I find that the landlord has not returned the remaining \$775.00 of the tenant's security deposit within 15 days of the provision of their forwarding address, nor did the landlord possess written authorization to retain the remaining amount. In accordance with section 38 of the Act, I find that the tenant is therefore entitled to a monetary order amounting to double the remaining deposit for a total monetary order of \$1,550.00.

The tenant also filed an application for a monetary order for reimbursement of a portion of the June 2019 rent as the tenant was forced to vacate the rental unit. In consideration of this claim, I find that the landlord had obtained the services of a bailiff to remove the tenant after obtaining a Writ of Possession. I find that the landlord was in possession of a valid and legal order to obtain vacant possession of the rental unit only after the tenant failed to abide by an Order of Possession to vacate within two days of being served the Order of Possession dated June 19, 2019. Section 57(1) of the Act defines an "overholding tenant" as a "tenant who continues to occupy a rental unit after the tenant's tenancy is ended". In this case I find that the tenant meets the definition of "overholding tenant" as the tenant continued to reside in the rental unit despite being ordered to vacate. I find that that this tenancy ended pursuant to a valid order, specifically a Writ of Possession issued under the Supreme Court Civil Rules, and accordingly, the tenant's application for reimbursement of their rent is dismissed without leave to reapply.

Conclusion

I issue a Monetary Order in the tenant's favour under the following terms which allows the tenant to recover the remaining security deposit retained by the landlord, plus a monetary award as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*: The remainder of the tenant's application is dismissed without leave to reapply.

Item	Amount
Return of Security Deposit	\$775.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	775.00
Total Monetary Order	\$1,550.00

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of 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: September 20, 2021

Residential Tenancy Branch