



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on May 3, 2021 seeking a monetary order for the return of the security and pet deposits they paid at the start of a past tenancy. They also sought compensation for other money owed, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on November 1, 2021. In the conference call hearing I explained the process and offered the attending party the opportunity to ask questions.

The tenant attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The tenant did not provide any documents as evidence for this hearing. The landlord did not attend the telephone conference call hearing.

At the outset of the hearing, the tenant affirmed an oath to state that their testimony was the truth.

Preliminary Matter

To proceed with this hearing, I must be satisfied that the tenant made reasonable attempts to serve the landlord with the Notice of Dispute Resolution for this hearing. This means the tenant must provide proof that the document was served using a method allowed under s. 89 of the *Act*, and I must accept that evidence.

In the hearing, the tenant spoke to how they served the notice to the landlord on May 24, 2021. This was in person to the landlord at their place of residence. The tenant

described how the landlord accepted the document, then looked at the tenant, turned around and closed the door to their own home. The tenant had a witness to this transaction; however, there was no written statement from that witness or other account in the hearing.

Based on this description of the tenant, affirmed under oath, I accept they served the notice of this hearing in a manner complying with s. 89(1)(a) of the *Act*. The hearing thus proceeded in the landlord's absence.

Issues to be Decided

- Is the tenant entitled to the return of the security deposit and the pet damage deposit, pursuant to s. 38 of the *Act*?
- Is the tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?
- Is the tenant entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

Background and Evidence

The tenant provided oral testimony during the hearing. The relevant portions are as follows:

- The tenancy agreement started on July 1, 2016 and they moved in on that same date.
- The rent amount started at \$2,400, the eventually increased to \$2,600 per month. At the time of the end of tenancy, they paid this amount.
- They paid a security deposit of \$1,400 and a pet damage deposit of \$400. This is as indicated on their Application.
- The tenant gave the landlord 30 days notice to end the tenancy, in advance of the final date on September 16, 2019. This was a formal written notice and an email giving the same information.
- This notice to the landlord included the tenant's forwarding address. This was a postal box address that the tenant continued to use as of the date of the hearing.

- On the tenant's move-out day, the landlord attended to complete a walk-through inspection of the rental unit. They requested a summary of damages, to which the landlord responded that the damage was greater than what could be covered by the deposits, and they did not have time to do this proper assessment.
- At that point, the landlord kept the entire deposit amounts and made no statement pledging their return.

The tenant also described the history of the tenancy that was fraught with tension. The parties went to dispute resolution four other times previously. This included the landlord trying end the tenancy.

The landlord also made an Application for compensation for damages to the rental unit, on September 30, 2019. This was disclosed by the tenant in their Application by a prior file reference number. The landlord did not attend that hearing on February 3, 2020, and the landlord's Application was thus dismissed by that Arbitrator.

In the second part of their claim for compensation, the tenant described how the landlord did not end the tenancy properly, and thus shirked their responsibility to pay the tenant a one-month rent equivalent. This is as per the *Act*, where the landlord should have properly ended the tenancy for use by their family member. The landlord's child took over the utilities within the rental unit; this means the end of the tenancy was really a matter of the landlord's own personal gain and therefore the tenant is entitled to this one month's rent as compensation. Alternatively, the landlord was trying to sell the rental unit, and that in itself would entail the landlord ending the tenancy also for personal gain and thus liable for a one-month rent amount.

Analysis

The *Act* s. 38(1) provides that a landlord must either: repay a security or pet deposit; or apply for dispute resolution to make a claim against those deposits. This must occur within 15 days after the later of the end of tenancy or the tenant giving a forwarding address.

The *Act* s. 38(4) provides that a landlord may retain a security deposit or pet deposit if the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. This subsection specifies this written agreement must occur at the end of a tenancy.

Following this, s. 38(6) sets out the consequences where the landlord does not comply with the requirements of section 38(1). These are: the landlord may not make a claim against either deposit; and, the landlord must pay double the amount of either deposit, or both.

I find as fact the tenant gave their forwarding address to the landlord as they provided in their affirmed testimony. This was in their initial notice to the landlord that they wished to end the tenancy.

I find as fact the landlord applied for dispute resolution on September 30, to make a claim against the deposits. This is fulfillment of s. 38(1) and the landlord complied with the requirement of that section. The landlord did not attend the hearing and no award was granted by the Arbitrator; however, the landlord did fulfill that requirement. This precludes s. 38(6), and the tenant is thus not eligible for double the amount of both deposits.

The landlord's claim was dismissed because the landlord did not attend the hearing to present their Application. The landlord was not entitled to any amount of the deposit for this reason. Based on the tenant's affirmed testimony, I find the landlord retained the deposit. They must repay both deposit amounts to the tenant; this total is \$1,800. I so award the tenant this amount in the form of a monetary order.

I find as fact the tenant initiated the end of tenancy by giving the landlord notice of this. There is no record the landlord attempted to end the tenancy either for their own personal use or as part of a sale. The portions of the *Act* relating to these grounds to end the tenancy – that is, s. 49 and s. 51 – do not apply to the situation here. Therefore, the tenant's claim for one-month rent as compensation is dismissed, without leave to reapply. In sum, a tenant is eligible for such compensation where the landlord ends the tenancy. That did not happen in this tenancy; therefore, the tenant is not eligible.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the tenant was moderately successful in their claim, I find they are entitled to recover the one-half the filing fee from the landlord. This is \$50.

Conclusion

I order the landlord to pay the tenant the amount of \$1,850.00 which includes: \$1,800 for the deposit amounts, and \$50 for the filing fee. I grant the tenant a monetary order for this amount. The tenant must serve this order on the landlord. Should the landlord fail to comply with this monetary order, the tenant may file it in the Provincial Court (Small Claims) where it may be 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 s. 9.1(1) of the *Act*.

Dated: November 02, 2021

Residential Tenancy Branch