



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, MNRT, FFT

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"). The Tenant applied for the return of their security deposit, for a monetary order for compensation for monetary loss or money owed, for a monetary order for the recovery of their cost for emergency repairs during the tenancy, and to recover their filing fee. The matter was set for a conference call.

The Tenant and their advocate (the "Tenant") attended the hearing and were each affirmed to be truthful in their testimony. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified their Application the Notice of Hearing document was served to the Landlord by registered mail sent on January 17, 2022; a Canada Post tracking number was provided as evidence of this service. I find that the Landlord had been duly served in accordance with sections 89 and 90 of the *Act*.

The Tenant was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Tenant was advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matter – Settlement Agreement

Although the Landlord did not attend these proceedings, they did submit 109 pages of documentary evidence. I have reviewed these documents and noted that the Landlord had submitted a previous decision issued by the Residential Tenancy Branch (RTB) dated June 11, 2019, the file number for the June 11, 2019 decision is recorded on the style of cause page of this decision. I have reviewed this document and noted that this decision was issued regarding a previous claim filed against this Landlord by this Tenant.

The recorded results of the previous proceedings was a settlement agreement reached between these parties, which states the following:

“Settlement::

At the end of the hearing the parties reached a settlement and they asked that I record the settlement pursuant to section 63(2) of the Residential Tenancy Act as follows:

- a. The parties mutually agree to end the tenancy in accordance with the two month Notice to End Tenancy on June 30, 2019.
- b. The parties request that the arbitrator issue an Order of Possession for June 30, 2019.
- c. The parties acknowledge that the Tenants are entitled to reside in the rental unit for the month of June 2019 rent free in satisfaction of their right to the equivalent of one month rent under section 51(1) of the Act.
- d. In addition the landlord shall pay to the tenants the sum of \$2000 to assist them with moving expenses.
- e. The tenants reserve their right under section 51(2) to claim against the purchaser if the purchaser does not move into the residential premises as provided in section 51(2) of the Act and this settlement shall not be considered as a release of those possible claims against the purchaser.
- f. The tenants release and discharge the landlord from all claims they have against the landlord with respect to this tenancy except for the return of

the security deposit which shall be dealt with in accordance with the Residential Tenancy Act.”

[Reproduced as written]

After reviewing this settlement agreement, I find that section F of this agreement discharged the Landlord from any future claims with respect to this tenancy by this Tenant, except for the return of the security deposit.

Consequently, I dismiss the Tenant’s claims for a monetary order for compensation for monetary loss or money owed and for a monetary order for the recovery of their cost for emergency repairs during the tenancy.

I will proceed on the Tenant’s remaining claims for the return of their security deposit and to recover their filing fee for these proceedings.

Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Is the Tenant entitled to the return of their security deposit?
- Is the Tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenant testified that the tenancy began on September 1, 2010, that rent in the amount of \$3,000.00 was to be paid by the first day of each month and that the Tenant paid the Landlord a \$1,500.00 security deposit at the outset of this tenancy. The Tenant also testified that their tenancy ended as of June 30, 2019. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

The Tenant testified that they provided the Landlord with their forwarding address by Canada Post Registered mail sent to the Landlord on August 18, 2019; a copy of the August 18, 2019 letter was submitted into documentary evidence by the Tenant.

The Tenant testified that the Landlord had not filed for dispute resolution, requesting permission to keep their security deposit nor had they given the Landlord permission to retain the security deposit.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

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.

I accept the testimony of the Tenant and find that this tenancy ended on June 30, 2019, the date the Tenant moved out of the rental unit and that they provided their forward address to the Landlord by registered mail sent on August 18, 2019. Pursuant to section 90 of the *Act*, I find that the letter containing the Tenant's forwarding address was deemed received by the Landlord five days after it was mailed, on August 23, 2019.

Accordingly, the Landlord had until September 7, 2019, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposits. The Landlord, in this case, did neither.

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree, in writing, to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit, based on unproven claims.

I find that the Landlord breached section 38(1) of the *Act* by not returning the Tenant's deposits or filing a claim against the deposits within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

38 (6) If a landlord does not comply with subsection (1), the landlord
(a) may not make a claim against the security deposit or any
pet damage deposit, and
(b) must pay the tenant double the amount of the security
deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenant has successfully proven that they are entitled to the return of double their deposit. I find for the Tenant, in the amount of \$3,000.00, granting a monetary order for the return of double the security deposit for this tenancy.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I find that the Landlord breached section 38 of the *Act* when they failed to repay or make a claim against the security deposit as required by the *Act*.

I find for the Tenant pursuant to sections 38 and 72 of the *Act*. I grant the Tenant a **Monetary Order** in the amount of **\$3,100.00**. 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: February 24, 2022

Residential Tenancy Branch