



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, RPP, FFT

Introduction

The Tenant applies for the following relief under the *Residential Tenancy Act* (the “Act”):

- Return of her security deposit pursuant to s. 38;
- Return of personal property pursuant to ss. 62 and 67; and
- Return of her filing fee pursuant to s. 72.

H.L. appeared as Tenant and was assisted by her advocate and partner, C.D.. T.H. appeared as agent for the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Tenant advises that the Notice of Dispute Resolution and their evidence was served on the Landlord by way of two registered mail packages sent in November 2021 and February 2022. The Landlord’s agent acknowledges receipt of the Tenant’s application materials. I find that the Tenant’s application materials were served in accordance with s. 89 of the *Act* and were acknowledged received by the Landlord.

The Landlord’s agent advises that the Landlord’s response evidence was personally served on the Tenant on March 11, 2022. The Tenant acknowledges receipt of the evidence, which comprised of a single letter. I find that the Landlord’s evidence was served in accordance with s. 89 of the *Act* and was acknowledged received by the Tenant.

Issue(s) to be Decided

- 1) Is the Tenant entitled to the return of her security deposit?
- 2) Should the Landlord be ordered to return the Tenant's personal property?
- 3) Is the Tenant entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant took possession of the rental unit on April 1, 2021.
- The Tenant gave vacant possession of the rental unit to the Landlord on April 30, 2021.
- An security deposit of \$850.00 and a deposit of \$100.00 for a key FOB was paid by the Tenant to the Landlord.

A copy of the written tenancy agreement was put into evidence by the Tenant.

The Tenant advised, through her advocate, that the rental unit did not suit her needs and that they had moved to the rental unit from elsewhere in Canada. The Landlord's agent advised that there is a clause within the tenancy agreement that permitted the Tenant to end the lease early provided she found a new tenant. The Landlord's agent further advised that the Tenant did not wish to find the new tenant themselves, so the Landlord charged them \$399.00 to find a new tenant for her. The Tenant indicates that the \$399.00 was paid to the Landlord as a service fee.

The Tenant confirmed that a written move-in and move-out inspection was conducted. The Tenant further advised that she provided the Landlord with her forwarding address on April 30, 2021. The Tenant provides a screenshot of the last page of her inspection report, which shows her forwarding address. The Landlord's agent confirmed the forwarding address was provided in writing on April 30, 2021.

The Landlord's agent indicates that they received a notice from the residential property's strata, which levied \$1,100.00 in fines against the Tenant. The Landlord's

agent further advised that these fines were outlined to the Tenant on May 11, 2021 and that the Tenant refused to pay the strata fines.

The issue of the strata fines prompted the Landlord to file an application with the Residential Tenancy Branch and the Landlord's agent indicates it was filed on May 14, 2021. The Landlord also provided the file number for the previous dispute and advised that it was scheduled to go on for hearing on November 15, 2021.

Sometime before the hearing, the strata advised the Landlord that they would be withdrawing the fines. The Landlord's agent indicated that the Landlord returned the Tenant's security deposit, the FOB deposit, and the \$399.00 fee on October 29, 2021. The Tenant confirmed the return of \$1,349.00 on October 27, 2021. The Landlord provides a copy of a letter dated October 29, 2021 in which states the \$1,349.00 was being returned and that the Landlord was withdrawing its application.

The Tenant does not deny that the Landlord filed an application, though argues that it was not filed in good faith and that the Landlord was abusing the dispute process to retain the security deposit, FOB deposit, and the fee. The Landlord's agent emphasized that the dispute was filed in relation to the strata fines, that this was communicated with the Tenant in the email of May 11, 2021, and that the money was returned to the Tenant when the strata withdrew the fines.

Analysis

The Tenant applies for the return of the security deposit and for return of personal property.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38.

Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

It is undisputed that the Tenant provided the Landlord with their forwarding address on April 30, 2021. It is further undisputed that a written inspection report was conducted and the images provided by the Tenant indicates that it was in a form permitted by the Regulations. I find that the Landlord's right to claim against the security deposit was not extinguished by either ss. 24(2) or 36(2).

I accept the Landlord's submission, corroborated by the information from the file number provided by the Landlord, that they filed their application against the security deposit on May 14, 2021. I find that Landlord complied with s. 38(1) of the *Act* in that they filed their application to claim against the security deposit on May 14, 2021, which is within 15-days of April 30, 2021.

It is further undisputed that the security deposit of \$850.00, the FOB deposit of \$100.00, and the fee of \$399.00, totaling \$1,349.00, was returned to the Tenant, with this occurring on either October 27 or 29, 2021. I need not determine the date the funds were returned as the difference in the parties' evidence is not material. After returning this amount, the Landlord says, and I accept, that they withdrew their application that was filed on May 14, 2021.

The Tenant filed the present application on November 2, 2021, which was after they received the return of the \$1,349.00. The Tenant filed their application on the belief that the Landlord must have returned the security deposit within 15-days of receiving the forwarding address. That is not what s. 38(1) says. The Landlord has a choice: they can either return the security deposit or file an application with the Residential Tenancy Branch within 15-days of receiving the Tenant's forwarding address. As stated above, I find that the Landlord complied with the 15-day timeline set by s. 38(1). The doubling provision of s. 38(6) does not apply.

The Tenant argues, without evidence or basis, that the Landlord filed their application in bad faith. The argument is based on a speculative conclusion that there was no merit to the Landlord's application, a point that can only be determined by a decision-maker after hearing the evidence. The Landlord's application was never heard as it was withdrawn. I place no weight in the Tenant's argument that the Landlord was acting in bad faith or was abusing the Residential Tenancy Branch dispute process under the *Act*. The Landlord was exercising their rights under the *Act* to claim against the security deposit, which they did within the relevant timeframe.

As the Landlord complied with s. 38(1) of the *Act* and the funds claimed by the Tenant were returned to her on October 27 or 29, 2021, I find that there is no basis for ordering the return of the amounts claimed and s. 38(6) does not apply. The Tenant's application is therefore dismissed.

Conclusion

The Landlord returned the amounts claimed by the Tenant on October 27 or 29, 2021. As the Landlord complied with s. 38(1) of the *Act*, the doubling provision of s. 38(6) does not apply. Accordingly, the Tenant's application is dismissed without leave to reapply.

As the Tenant was unsuccessful in her application, I find that she is not entitled to the return of her filing fee and her claim under s. 72 of the *Act* is dismissed without leave to reapply. She shall bear her own expense for the application.

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: March 22, 2022

Residential Tenancy Branch