



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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 by the attending parties. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' application. In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. The tenants confirmed receipt of the landlord's evidentiary materials. I find the tenants duly served with the landlord's evidence. The landlord testified that they were not served with the tenants' evidence. After reviewing the documents submitted by the tenants, the landlord took no issue with the admittance of these materials, and proceeding with the scheduled hearing.

Preliminary Issue – Are there reasonable grounds for the application?

The tenants filed this application for the return of their security deposit plus compensation under section 38 of the *Act* for the landlord's failure to return their security deposit.

This tenancy began on September 1, 2019 with a different landlord, NL. CM and NL signed a tenancy agreement for a month-to-month tenancy with monthly rent set at \$1,500.00, which was eventually increased to \$1,800.00. As noted on the tenancy agreement, no security deposit was collected by the landlord at the time.

The new landlord took over the tenancy in October 2020 when NL sold the property to SB, the respondent in this dispute. SB testified that an agreement was reached between NL and SB where NL would provide SB with a “security deposit” in the amount of \$900.00 as one was never collected at the beginning of the tenancy, and SB was concerned about the lack of a security deposit or move-in inspection.

The landlord entered into evidence a copy of the personal agreement dated October 30, 2020, which is addressed to both SB and the tenant CM, and signed by NL. In the letter NL thanks both SB and CM for their efforts in completing the sale, and expressed happiness that CM would remain as a tenant.

NL then states that the “unusual situation whereby I put up the ‘security deposit’ on [CM]’s behalf can be a bit confusing”, and then goes on to say that “settlement of all accounts during the term and at the termination of the lease would be a matter to be agreed between [SB] and [CM]. (Names have been replaced with initials in this decision for privacy).

NL suggests in the letter to “clarify and consider either of the two following settlement options at the end of the lease” which are:

“1. [CM] could settle all accounts direction with [SB](damages, utilities etc) Once settled the ‘security deposit’ of \$900 would be returned direction to me within 15 days.

2. [SB] could deduct any amounts outstanding up to the limit of the security deposit. If there were any additional amounts that would be due that would be for [SB] and [CM] to settle. If there were only some deductions from the security deposit any remaining deposit funds would be returned by [SB] to me. [CM] would then replay any amounts which had been deducted to me”.

The tenant CM gave written notice to the landlord dated September 8, 2021 that they would be moving out on October 15, 2021 by 1 p.m., and in that same letter stated “we will be requesting you to giving the security deposit back to [NL], after comparing the

inspection reports to the walk through". In that letter, the tenants also provided their forwarding address. A copy of the letter was entered into evidence by the tenants.

SB confirmed in the hearing that \$200.00 was returned to NL as per option 2 of the settlement options, with the remaining \$700.00 retained to cover losses that took place during the tenancy. SB testified that they were unaware of any agreements between the tenants and NL. The tenants subsequently filed this application for dispute resolution on November 21, 2021 as they feel SB failed to return the entire deposit, or file an application to retain the money. SB argued that no such dispute exists under section 38 of the *Act* as no security deposit was ever paid by the tenant(s), and that the \$900.00 paid was an amount paid by NL and although referenced as a 'security deposit', was part of a settlement agreement strictly between NL and SB. SB testified that they were concerned about their obligations as a landlord, and contacted the Residential Tenancy Branch relaying the details, and to obtain advice. SB submitted a copy of this correspondence dated November 16, 2021.

The tenants testified that NL had paid the \$900.00 security deposit on their behalf as a loan, which was later repaid to NL on November 17, 2021. CM testified that they had a letter from NL which was not entered into evidence. CM read the letter in the hearing, and testified that NL wanted the arbitrator to know that CM was obligated to pay NL back the deposit as the \$900.00 was a loan by NL, and not a payment on the tenants' behalf. The tenants called NL as a witness in the hearing, who confirmed that SB had returned \$200.00 back to NL, and that the tenants had paid NL back the \$900.00 by electronic transfer on November 17, 2021. \$200.00 was subsequently returned to the tenants by NL as the remaining balance was \$700.00. NL testified that the tenants' account of what happened "sounds about right", but testified that they did not have the documents in front of them to verify the details.

Section 20 of the *Act* clearly states that: "

A landlord must not do any of the following:

- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement".

In this case, it is undisputed that no security deposit was paid by either of the tenants when the tenant CM and the original landlord NL entered into a tenancy agreement in 2019. An agreement was reached between NL and SB when SB purchased the property in October 2020, and SB expressed concern about the lack of a security deposit and move-in inspection. Although the \$900.00 was referenced as a "security

deposit” by the parties, the landlord did not have authority under the *Act* to collect a security deposit at any point other than when the parties had entered into the tenancy agreement. I am not satisfied that the parties had entered into any new tenancy agreements after September 2019. In this case, SB would be expected to assume the tenants under the same terms and conditions as the previous tenancy agreement.

Furthermore, I find that the loan agreement was between the tenants and NL. I do not find that the evidence sufficiently supports that there was an agreement between SB and the tenants, specifically an agreement for SB to collect or return any money under section 38 of the *Act*. As noted in the agreement dated October 30, 2020, SB was to return the deposit, or a portion of the deposit, to NL, and not directly to the tenants.

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.

In this case, I am neither satisfied that a security deposit was paid by the tenants at the beginning of the tenancy, nor am I satisfied that the \$900.00 collected by SB in October 2020 qualifies as a security deposit within the definition of the *Act*.

Section 62(4)(a) of the *Act* states:

Director’s authority respecting dispute resolution proceedings

62(4) The director may dismiss all or part of an application for dispute resolution if

- (a) there are no reasonable grounds for the application or part,
- (b) the application or part does not disclose a dispute that may be determined under this Part

As no security deposit was paid by the tenants when they had entered into this tenancy agreement, I find that the tenants’ application does not disclose any reasonable grounds for this application, nor does this application disclose a dispute that may be determined under this Part. The tenants’ entire application is therefore dismissed without leave to reapply.

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: June 22, 2022

Residential Tenancy Branch