



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing was held, via teleconference, on July 26, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order that the Landlord return all or part of the security deposit or pet damage deposit

The Tenant and the Landlord attended the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding package, but stated it did not contain any evidence. The Tenant stated he included his evidence with this package, but he did not have any documentary evidence or proof as to what was contained in the package he sent. He referred to an affidavit of service. However, that affidavit was dated before the Notice of Dispute Resolution Proceeding was created, so it was not helpful. I find the Landlord is sufficiently served with the Tenant's Notice of Dispute Resolution Proceeding, as the Landlord acknowledged getting it, but without further evidence showing what was in the package, I find the Tenant has not provided sufficient evidence that he served his evidence to the Landlord. I find the Tenant's documentary evidence is not admissible.

The Tenant confirmed receipt of the Landlord's evidence package. I find the Landlord sufficiently served her evidence for the purposes of this proceeding.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

I note the Tenant initially applied for a direct request and that application was adjourned to this participatory hearing because the Tenant's name on the tenancy agreement did not match the Tenants name on this application. However, I note the Tenant who signed the tenancy agreement, on the final page of that document, listed his name and signed/dated this signature. Although the name differs from the Tenant name on the first page of the tenancy agreement, I am satisfied that the Tenant on this application is a Tenant under the Act, with a valid tenancy agreement.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The parties confirmed that they both signed a tenancy agreement (provided into evidence) on or around July 6, 2021, and the tenancy was set to start on July 15, 2021. The Tenant paid a security deposit in the amount of \$1,550.00 on or around July 6, 2021, and the Landlord confirmed she holds this amount.

The Landlord stated she did not return this amount because she suffered a rental loss due to the fact that the Tenant never moved in, and never paid first month's rent. The Landlord confirmed she never filed an application to retain the deposit.

After the tenancy agreement was signed, the Tenant asked if he could move in on August 1, 2021, instead, but the parties had a series of text messages following this, and the Tenants never moved in. Copies of the text messages were provided into evidence, showing the communications between the parties from the date the Tenants went to view the property, to when the deposit was paid, and then when the parties determined that the Tenants would not be moving in (around July 9, 2021).

The Landlord confirmed she received the Tenant's forwarding address, in writing, on October 15, 2022.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

I note the following portion of the Act:

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit

In order to enter into a contract, mutual declarations of intent must be exchanged. In this case, the Landlord agreed to rent the premises to the Tenant for a price. The Tenant agreed to pay this price, along with a security deposit, which was paid on or around July 6, 2021.

Copies of text messages were provided into evidence, which show that the parties had several text message conversations about the rental unit, on or around July 5, 2021, and the parties agreed upon the rent, and the security deposit amount. The Tenant paid a security deposit in the amount of \$1,550.00 on July 6, 2021, and signed the tenancy agreement that same day. The tenancy agreement shows that the tenancy was supposed to start on July 15, 2021. However, as per the text messages, it appears the parties had a discussion and disagreement about the start date, after the tenancy agreement was signed (the Tenant didn't want to move in, and start paying rent until August and there was a disagreement about signing another addendum). Ultimately, the parties disagreed over the move in date and other items, and the Tenant never moved in.

That being said, I find the tenancy agreement provided into evidence is a valid tenancy agreement, and it is binding on the parties, and under the Act, regardless of the fact the Tenant never moved in.

In this case, both parties confirmed that the Tenant never moved in. The Landlord confirmed that she got the Tenant's forwarding address in writing on October 15, 2021.

There is no evidence that the Tenant authorized any deductions from the security deposit. As the Tenant never moved in, no inspection reports were completed. I find there is no evidence that either party extinguished their right to the security deposit.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from receipt of the forwarding address in writing (Until October 30, 2021) to either repay the security deposit (in full) to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord did neither and I find the Landlord breached section 38(1) of the Act.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenant is entitled to recover double the amount of the security deposit (\$1,550.00 x 2). Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I issued the Tenant a monetary order for \$3,200.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*.

Conclusion

I grant the Tenant a monetary order in the amount of **\$3,200.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 27, 2022