



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL (Landlord)
 MNSD, FFT (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Landlord filed their application December 10, 2021 (the “Landlord’s Application”). The Landlord applied as follows:

- For compensation for damage to the rental unit
- To keep the security deposit
- For reimbursement for the filing fee

The Tenant filed their application January 17, 2022 (the “Tenant’s Application”). The Tenant applied as follows:

- For return of double the security deposit
- For reimbursement for the filing fee

The Landlord appeared at the hearing. The Tenant appeared at the hearing with J.M., their advocate. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Tenant testified that they did not receive a hearing package or evidence from the Landlord. The Tenant testified that they were not aware of the Landlord's Application until the date of the hearing.

The Landlord advised that they did not serve the hearing package for the Landlord's Application or their evidence on the Tenant because they did not know they had to.

The Landlord was required to serve the hearing package for the Landlord's Application and their evidence on the Tenant pursuant to rules 3.1 and 3.14 of the Rules. Given the Landlord did not serve the hearing package for the Landlord's Application on the Tenant, and given the Tenant was not aware of the Landlord's Application until the date of the hearing, the Landlord's Application is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the "Act").

The Landlord confirmed receipt of the hearing package and evidence for the Tenant's Application and did not raise an issue with service. Given this, I proceeded with the Tenant's Application.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the relevant evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed on the following. They had a verbal tenancy agreement. The tenancy started January 27, 2021, and was a month-to-month tenancy. The Tenant paid a \$600.00 security deposit.

The parties agreed on the following. The tenancy ended March 31, 2021. The Tenant provided a forwarding address to the Landlord in writing November 24, 2021. The Landlord did not have an outstanding Monetary Order against the Tenant at the end of

the tenancy. The Tenant did not agree to the Landlord keeping a specific amount of the security deposit at the end of the tenancy.

The parties agreed on the following. No move-in inspection was done, and the Landlord did not provide the Tenant two opportunities, one on the RTB form, to do a move-in inspection. The parties did not do a move-out inspection together. The Landlord did not provide the Tenant two opportunities, one on the RTB form, to do a move-out inspection.

Analysis

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

I accept that the tenancy ended March 31, 2021, based on the agreement of the parties.

I accept that the Tenant provided a forwarding address to the Landlord in writing November 24, 2021, based on the agreement of the parties.

November 24, 2021 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from November 24, 2021, to repay the security deposit in full or file a claim with the RTB against the security deposit.

The Landlord did not repay the security deposit. The Landlord filed the Landlord's Application December 10, 2021, one day late. I find the Landlord failed to comply with section 38(1) of the *Act*.

Sections 38(2) to 38(4) of the *Act* state:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain **the amount** to pay a liability or obligation of the tenant...(emphasis added)

Based on the testimony of the parties about a move-in and move-out inspection, I find the Tenant did not extinguish their right to return of the security deposit. Section 38(2) of the *Act* does not apply.

The Landlord did not have an outstanding Monetary Order against the Tenant at the end of the tenancy. Section 38(3) of the *Act* does not apply.

For section 38(4)(a) of the *Act* to apply, the Tenant had to agree in writing at the end of the tenancy to the Landlord keeping a specific amount of the security deposit. Based on the testimony of the parties, I find the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep a specific amount of the security deposit. Section 38(4) of the *Act* does not apply.

Given the above, I find the Landlord failed to comply with section 38(1) of the *Act* in relation to the security deposit and that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply. Therefore, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenant pursuant to section 38(6) of the *Act*.

The Landlord must return \$1,200.00 to the Tenant. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

As the Tenant was successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$1,300.00 and I issue the Tenant a Monetary Order for this amount.

Conclusion

The Tenant is issued a Monetary Order for \$1,300.00. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the 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 *Act*.

Dated: July 18, 2022

Residential Tenancy Branch