



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

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

- a monetary order for \$687.50 representing two times the amount of the security deposit, less the amount of the security deposit already returned, pursuant to sections 38 and 62 of the Act; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing. The landlord was represented at the hearing by the former property manager for the landlord ("**LM**") who confirmed that she was authorized to represent the landlord at this hearing. Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and LM confirmed, that the tenant served the landlord with the notice of dispute resolution package and supporting documentary evidence. LM stated that the landlord did not submit any documentary evidence in response to this application. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the tenant entitled to:

- 1) a monetary order of \$687.50; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting May 15, 2021 and ending May 15, 2022. Monthly rent was \$1,200. The tenant paid the landlord a security deposit of \$600.

The parties agree that the tenancy ended on October 31, 2021 and that, on November 30, 2021, The landlord sent the tenant a check for \$512.50 representing the return of the security deposit less \$87.50 which represented a charge for cleaning the rental units carpets.

The parties agree that the tenant provided a written notice to end tenancy, as well as her forwarding address, to the landlord on September 26, 2021 by placing it in a drop box located in the residential property. This drop box what is used by occupants of the residential property to deliver documents (including rent payments) to the landlord. LM does not dispute that the landlord received the tenant's forwarding address on September 26, 2021.

The tenant testified that she wanted to leave rental unit prior to the end of the fixed term because there was a bed bug infestation in the residential property. She testified that she communicated this with LM prior to delivering the September 26, 2021 letter, and asked her when the soonest she would be able to leave the rental unit would be. She testified that LM responded that the earliest she could end the tenancy would be October 31, 2021. The tenant testified that she understood this to mean that the landlord was mutually agreeing with her to end the tenancy and letting her out of the fixed-term agreement.

LM testified that she did not agree to let the tenant out of the agreement, and that the tenant breached the tenancy agreement by vacating prior to the end of the fixed term.

LM admitted to deducting \$87.50 from the security deposit. She testified that she thought she was "letting the tenant off easy", as she was not advancing a claim against the tenant for expenses related to re-renting the rental unit (which she says she would be entitled to, as the tenant breached the fixed term agreement).

The tenant argues that she should not be found responsible for cleaning the carpet, as the tenancy lasted less than one year. Additionally, and in any event, she testified that she did not consent to this deduction, so if the landlord thought it was entitled to this amount it should have made an application to the Residential Tenancy Branch to recover it.

Analysis

Section 38(1) of the Act states:

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.

Based on the testimony of the parties, I find that the tenancy ended on October 31, 2021 (when the tenant vacated the rental unit) and that the tenant provided her forwarding address in writing to the landlord on September 26, 2021.

The landlord has not returned the full amount of the security deposit to the tenants within 15 days of receiving their forwarding address, or at all. The landlord returned \$512.50 of the security deposit on November 30, 2021.

The landlord has not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the tenant, or at all.

It is not enough for the landlord to allege that the tenant was responsible for cleaning the carpets or had breached the tenancy agreement by vacating the rental unit prior to the end of the fixed term. The landlord must actually apply for dispute resolution, claiming against the security deposit, within 15 days from receiving the tenants' forwarding address.

The landlord did not do this. Accordingly, I find that it has failed to comply with its obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

- (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.

Residential Tenancy Branch Policy Guideline 17 provides an example as to how this section is to be applied when the landlord has returned a portion, but not all, of a security deposit:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is $\$525.00$ ($\$800 - \$275 = \$525$).

So, as the landlord has failed to comply with section 38(1), I must order that they pay the tenant $\$687.50$ ($\$600 \times 2 = \$1,200$; $\$1,200 - \$512.50 = \$687.50$).

Pursuant to section 72(1) of the Act, as the tenant has been successful in the application, she may recover the filing fee from the landlord.

Conclusion

Pursuant to sections 62, 65, 67, and 72 of the Act, I order that the landlord pay the tenant $\$787.50$, representing the repayment of double the deposit, less the amount already returned, plus the filing fee.

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 26, 2022

Residential Tenancy Branch