



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR

Introduction

This hearing originated as a Direct Request proceeding. In an Interim Decision dated January 11, 2022 a participatory hearing was ordered. This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this decision.

Preliminary Issue- Service

The tenant testified that she served the landlord with a copy of the Interim Decision, the Notice of Reconvened Hearing and her evidence via registered mail on January 18, 2022. The landlord testified that he received the above package but that it did not contain the Notice of Reconvened Hearing.

The landlord testified that he learned of this hearing because of an automated email he received from the Residential Tenancy Branch. The landlord testified that despite not receiving the Notice of Reconvened Hearing, he consented to proceeding with the application rather than adjourning to allow for service of the Notice of Reconvened Hearing. As the landlord has agreed to proceed with this application, this application will be heard on its merits.

I find that the landlord was served with the tenant's evidence in accordance with section 88 of the *Act*.

The landlord testified that he did not serve the tenant with his evidence which consisted of a copy of the move out condition inspection report which was uploaded to the Residential Tenancy Branch and so the evidence is excluded from consideration. I note that while the written evidence is excluded, the testimony of the parties regarding the agreed contents of the landlord's version of the condition inspection report is allowed into evidence.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2019 and ended at the end of June 2021. Monthly rent in the amount of \$1,500.00 was payable on the first day of each month. A security deposit of \$750.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenant and the landlord completed a joint move in condition inspection report on September 29, 2019. The tenant and the landlord signed the move in condition inspection report.

Both parties agree that a move out condition and inspection report was completed by the landlord and an agent for the tenant on June 31, 2021. The move out condition inspection report was signed by the landlord but not the tenant's agent. Both parties agree that after the move out condition inspection was completed the landlord sent the tenant the move out condition inspection report to sign. Both parties agree that the tenant provided a forwarding address on the move out condition inspection report and authorized the landlord, in writing, to retain the entire security deposit of \$750.00. Both parties agree that the move out condition inspection report with the above authorization was sent to the landlord.

The tenant testified that she filled out the form wrong and thought she was asking for the return of the security deposit, not that she was authorizing the landlord to retain it. The tenant testified that she informed the landlord of same and he told her to fill out the move out condition inspection report properly and that he would then return her deposit. The tenant entered into evidence a text exchange between herself, and the landlord dated August 15, 2021 which states:

- Landlord- Fill out the paperwork properly and send it to me again and I'll send you your damage deposit once I get it.
- Tenant- Thank you just give me a minute
- Tenant- I'm still working on it

The landlord testified that the tenant filled out the move out condition inspection from again and in the new condition inspection report, the tenant did not authorize the landlord to retain the security deposit. Both parties agree that the landlord then e-transferred the tenant the \$750.00 for the security deposit and that the tenant said it failed and asked the landlord to cancel the original transfer and to try again. Both parties agree that the landlord cancelled the original transfer and sent another one. The tenant testified that that one also failed.

The landlord testified that he was going to try a third time to send the money, but he received notice from the Residential Tenancy Branch that the tenant filed a dispute against him and so decided to wait for this hearing.

The move out condition inspection report entered into evidence by the tenant states that at the end of the tenancy there is no damage for which the tenant is responsible.

Analysis

Section 38(1) of the *Act* states:

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.

Section 38(4) of the *Act* states:

(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, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

Section 38(6) of the *Act* states:

(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.

Pursuant to section 38(4) of the *Act*, I find that the landlord was not required to return the security deposit to the tenant prior to today's hearing because the landlord received

authorization in writing from the tenant to retain it. I therefore find that the tenant is not entitled to receive double the security deposit pursuant to section 38(6) of the *Act* as their written authorization to retain it.

However, based on the testimony of both parties, I find that it was understood by both parties that the tenant did not intend to give the landlord the authorization to retain the deposit and that the authorization was rescinded. I find the tenant's authorization to retain the deposit is void and was understood to be a mistake by both parties.

I find that the landlord was provided with the tenant's forwarding address on the move out condition inspection report and that the tenant is entitled to the return of the security deposit, pursuant to section 38(1) of the *Act*.

Pursuant to section 38(1) of the *Act*, I find that the tenant is entitled to the return of the security deposit in the amount of \$750.00.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$750.00

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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 *Residential Tenancy Act*.

Dated: August 04, 2022

Residential Tenancy Branch