



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNSD, MNDCT, FFT

Introduction

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

- monetary order for \$2,700 representing two times the amount of the security deposit, pursuant to sections 38 and 62 of the Act;
- a monetary order for \$2,781.94 pursuant to sections 51(1) and 62 of the Act; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution package and supporting documentary evidence. The landlord testified that the documents received included a USB thumb drive, it did not include any explanation as to what was on the thumb drive. He testified that he does not have a laptop or other device that the drive could be connected to (he uses an iPad) and was not aware of what files were on there until the hearing itself. At the hearing, the tenant testified that the USB drive contained a video recording of him serving the landlord's live-in partner with a letter on July 20, 2021.

The landlord did not submit any documentary evidence in response to the tenant's application.

The Rules of Procedure require that a party take certain steps when dealing with serving the opposing party with digital evidence. The tenant did not take these steps in this case. However, I do not find it necessary to make a final determination on the admissibility of the video file on the thumb drive, as the file itself is not necessary for the resolution of this application.

Preliminary Issue – Partial Payment

The parties agreed that roughly two weeks prior to the hearing, the landlord he transferred the tenant \$4,131.94, representing the return of the security deposit, one month's rent, and one day's prorated rent.

The tenant stated that, in addition to this amount, he was seeking to recover the filing fee as well as the penalty (equal to the security deposit itself) for the landlord's failure to provide him with the security deposit in accordance with the Act.

Issues to be Decided

Is the tenant entitled to:

- 1) a monetary order of \$1,350;
- 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 November 6, 2019 and ending December 1, 2020. After the end of the fixed term, the tenancy converted to a month to month tenancy, as per section 44(3) of the Act. Monthly rent was \$2,695. The tenant paid the landlord a security deposit of \$1,350, which the landlord returned to the tenant two weeks prior to this hearing.

On June 26, 2021, the landlord served the tenant with a two month notice to end tenancy for landlord's use (the "**Notice**"). It specified the reason for ending the tenancy as "all the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give the Notice because the purchaser or a close family member intends in good faith to occupy the rental unit."

On July 20, 2021, the tenant testified that he hand delivered a letter serving as a 10 Day Notice to End Tenancy (as permitted by section 50(1) of the Act) to the landlord's live-in partner at the landlord's residence (the "**July Letter**"). He testified that the landlord's partner acted on the landlord's behalf throughout the tenancy. The July Letter included the tenant's forwarding address.

The landlord testified that he has a live-in partner, and that she lived with him on the date in question, but he testified that he never received the July Letter or that his partner never brought it to his attention. He speculated that it got lost in a pile of mail.

The parties agreed that the tenant sent the landlord a text message indicating he was giving 10 days' notice of the end of the tenancy on July 20, 2021. The tenant submitted the text message chain into evidence. It stated:

July 20, 1:51 PM

Tenant: Hi [landlord] are you home today

July 20, 7:25 PM

Landlord: Unfortunately not. What's up?

Tenant: Hey [landlord] , I've found a new place so wanted to give my 10 day notice to move out early, [landlord's partner] was home so gave it to her

Jul 26, 9:59 AM

Landlord: Thanks for the heads up [rest of message cut off]

The tenant vacated the rental unit on July 30, 2021. The parties conducted a move-out condition inspection at the end of tenancy. The landlord testified that the tenant damaged the floor of the rental unit on the last day of the tenancy, but stated that he did not make an application with the Residential Tenancy Branch (the "**RTB**") for compensation for the damage, due to it not being worth the effort in his opinion.

The landlord testified that after the tenancy ended, the tenant did not contact him asking for the return of the security deposit or to provide him with his forwarding address.

Additionally, he stated that after making this application, the tenant did not reach out to him regarding resolving this matter until after he e-transferred him the amount set out above. He argued that this indicated that the tenant was not interested in resolving the matter.

Analysis

I must first note that parties are not under any obligation after an application is filed to engage in settlement discussions or otherwise communicate. As such, I do not draw any conclusions from the tenant's non-responsiveness to the landlord's initial attempts to contact him.

The only item at issue is whether the landlord complied with his obligations relating to the return of the security deposit.

Section 38(1) of the Act addresses a landlord's obligation regarding the security deposit. It 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 tenant, I find that the tenancy ended on June 30, 2021. The tenant testified that the July Letter contained his forwarding address and that he gave the July Letter to the landlord's live-in partner. The landlord testified that he did not receive it.

Section 88 of the Act sets out how parties may serve each other with documents. It states:

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

[...]

- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

As such, leaving a copy of the July Letter with the landlord's live-in partner is sufficient service for the purposes of the Act.

Based on the tenant's testimony, corroborated by the text message he sent the landlord on July 20, 2021, I find that the tenant gave a copy of the July Letter, which contained the tenant's forwarding address, to the landlord's partner on July 20, 2021. The landlord is therefore considered served with the forwarding address on that date.

The landlord has not returned the security deposit to the tenant within 15 days of receiving his forwarding address.

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.

The landlord returned the security deposit to the tenant over one year after the tenancy ended and having received the forwarding address.

It is not enough for the landlord to allege the tenants caused damage to the rental unit. He must actually apply for dispute resolution, claiming against the security deposit, within 15 days of the later of the tenancy ending or from receiving the tenant's forwarding address.

The landlord did not do this. Accordingly, I find that he has failed to comply with his 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.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I must order that they pay the tenants double the amount of the security deposit (\$2,700). The amount of the security deposit returned (\$1,350) must be credited against this amount.

As the tenant have been successful in his application, he is entitled to have his filing fee of \$100.00 repaid by the landlord.

Conclusion

Pursuant to sections 38, 62, and 72 of the Act, I order that the landlord pay the tenant \$1,450, representing the following:

Description	Amount
Double security deposit	\$2,700.00
Credit for late-returned security deposit	-\$1,350.00
Filing fee	\$100.00
Total	\$1,450.00

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 24, 2022

Residential Tenancy Branch