



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code MNSDS-DR

Introduction

This hearing dealt with the Tenant's application under the Residential Tenancy Act (the "Act") for return of the Tenant's security deposit pursuant to section 38.

The Landlord and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

All attendees at the hearing were advised the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The parties did not raise any issues with respect to service of documents. The Landlord testified that this hearing had been rescheduled, so he received the latest hearing notice from the Residential Tenancy Branch.

The Landlord confirmed receipt of the Tenant's documentary evidence. The Landlord also confirmed he did not submit any documentary evidence and relies on oral testimony for this hearing.

Issues to be Decided

Is the Tenant entitled to the return of her security deposit?

Background and Evidence

The Tenant testified she never moved into the rental unit. The Tenant testified that she went to view the rental unit with her partner at the time, LC. The Tenant testified that

she and LC were supposed to move into the rental unit on November 1, 2021 and pay rent of \$1,400.00 per month. The Tenant testified she paid the Landlord a security deposit of \$700.00. via e-transfer on October 10, 2021.

The Tenant testified that she and LC later broke up. The Tenant testified that she sent the Landlord an email on October 17, 2021 to inform him they would not be moving into the rental unit. The Tenant testified she asked for her security deposit to be returned. The Tenant testified that the Landlord refused to return the deposit and asked her to talk to LC.

The Tenant submitted a photograph of a letter to the Landlord dated October 19, 2021, which includes the Tenant's forwarding address and a request for the return of the security deposit. The Tenant's application indicates that she sent her forwarding address to the Landlord by registered mail on October 26, 2021.

The Landlord acknowledged that the Tenant and LC came to view the rental unit together. The Landlord acknowledged that he received the \$700.00 e-transfer from the Tenant.

The Landlord testified that LC had asked whether the Landlord had another place available before November 1, 2021, since LC was living in a hotel at the time.

The Landlord testified that he had a converted garage on another property that was available. The Landlord testified he took the Tenant and LC to view this property.

The Landlord testified that on the following day, LC moved into the converted garage. The Landlord testified that LC had agreed to pay the Landlord for his stay. The Landlord testified that after 2 or 3 days, LC disappeared and took off with the Landlord's brand-new fridge. The Landlord testified that afterwards, he could not find LC. The Landlord argued that it was LC who rented the rental unit, so the security deposit should not be returned.

The Tenant testified she never moved into the converted garage. The Tenant argued that it is unfair for her to pay for LC's bad behaviour.

Analysis

Section 17 of the Act states that a landlord may require a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement. Paying a security deposit to a landlord is evidence that a verbal tenancy agreement has formed, even if the parties have not executed a written agreement.

In this case, I find that there was a verbal tenancy agreement between the parties, under which the Tenant was to take possession of the rental unit on November 1, 2021 and pay rent of \$1,400.00 per month. I further find that the Tenant paid a \$700.00 security deposit to the Landlord on October 10, 2021 as a condition of the parties' verbal tenancy agreement.

I find that since the security deposit was paid for by the Tenant, a tenancy was established between the Landlord and the Tenant for the rental unit. It is unclear whether LC was also to be a tenant or merely a permitted occupant of the rental unit. However, given that no written tenancy agreement was ever signed by LC and the fact that LC has not applied for the return of the security deposit in the capacity of a tenant, I conclude that the verbal tenancy was established between the Landlord and the Tenant only.

Based on the parties' testimonies, I find that the tenancy ended on October 17, 2021 when the Tenant advised the Landlord that she would not be moving in. I do not find any evidence to suggest that the Landlord had disputed or rejected the Tenant's notice to end the tenancy. I find that neither the Tenant nor the proposed occupant LC moved into the rental unit.

Section 24(2)(a) of the Act states that the right of a landlord to claim against a security deposit for damage residential property is extinguished if the landlord does not offer the tenant at least two opportunities for inspection in accordance with section 23(3) of the Act. In this case, I find the parties did not do any move-in or move-out inspections because the Tenant never moved into the rental unit. I further find that the Landlord did not offer the Tenant two opportunities for inspection of the rental unit.

Residential Tenancy Policy Guideline 17. Security Deposit and Set Off ("Policy Guideline 17") states that a landlord who has lost the right to claim against the security deposit for damage to the rental unit retains the following rights:

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
- to file a claim against the deposit for any monies owing for other than damage to the rental unit;
- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
- to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

Policy Guideline 17 further states that "the landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit."

The corresponding provision in the Act is section 38(1), which states as follows:

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.

In this case, I accept the Tenant's evidence that she requested the Landlord to return the security deposit to her and that she had sent her forwarding address to the Landlord by registered mail on October 26, 2021. Pursuant to section 90(a) of the Act, I find the Landlord is deemed to have received the Tenant's forwarding address in writing on October 31, 2021.

I find the Landlord neither repaid the security deposit to the Tenant nor applied for dispute resolution within 15 days of receiving the Tenant's forwarding address, that is, by November 15, 2021.

Section 38(6) of the Act states that if a landlord does not comply with section 38(1), the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

Policy Guideline 17 states that "[u]nless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit". In this case, although the Tenant's application states that she is seeking the return of her \$700.00 deposit, I do not find the Tenant to have specifically waived the doubling provision of section 38(6).

Accordingly, I conclude that the Landlord is required to pay the Tenant double the security deposit pursuant to section 38(6) of the Act, or $2 \times \$700.00 = \$1,400.00$.

I accept the Landlord may have a claim against LC for other damage or loss. However, I note that the Landlord's claim against LC is in relation to another address, which I do not find to be related to the rental unit or to this tenancy.

I note that as stated above, even where a landlord has a legitimate reason for retaining the security deposit, the landlord must make an application for dispute resolution in accordance with section 38 of the Act once the tenancy has ended and the tenant has provided their forwarding address. The landlord cannot simply keep the security deposit without the tenant's written consent.

Conclusion

Pursuant to 38(6) of the Act, I grant a Monetary Order in the amount of \$1,400.00 to the Tenant. This Order may be served on the Landlord, filed in the Small Claims Division of the Provincial Court 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: August 10, 2022

Residential Tenancy Branch