



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of the security deposit - Section 38;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on July 1, 2020 and ended August 6, 2020. Rent of \$700.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$350.00 as a security deposit. The Landlord has not returned the security deposit and has not made an application claiming against the security deposit.

The Tenant states that they provided their forwarding address initially by regular mail on about August 23, 2020. The Tenant states that after receiving no reply from the

Landlord the Tenant again sent their forwarding address by registered mail on October 25, 2020. The mail was returned with a postal note that the Landlord moved. The Tenant argues that because it was sent by registered mail the delivery would have been taken to the door for signature and that a person would have informed the postal service of the move in order for the postal service to indicate that on the envelope.

The Landlord states that they did not receive any forwarding address and have not moved from the address to which the mail was sent. The Landlord states that no registered mail came to them.

It was noted that the Tenant's application set out its claim for compensation as follows: "Cost of movers: \$157.21; Loss of quiet enjoyment: \$375; Damages under s. 67: \$700;". No details or reasons or statement on the basis for the claimed amounts were provided. The Landlord states the Tenant's claim for compensation does not provide any reasons, but the Landlord believes that it may be in relation to the Tenant moving out but has no idea what the claim would otherwise be about. The Landlord states that the tenancy end was voluntary as noted in a previous decision dated September 14, 2020.

The Tenant states that they are claiming all the compensation amounts for the Landlord's breach of the Tenant's right to quiet enjoyment during the tenancy. The Tenant states that the Tenant lived there for a month and the Landlord repeatedly came down to the Tenant's unit telling the Tenant to move. The Tenant states that they were in a difficult place and were changing schools at the time so instead of dealing with the Landlord the Tenant chose to move. The Tenant argues that because they did not seek a remedy during the tenancy, they should not stop them from seeking a remedy after the end of the tenancy.

Analysis

Section 59(2) of the Act provides that an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. As the Landlord does not know the details of the Tenant's claim for damages and loss of quiet enjoyment, as the Tenant's application does not provide any particulars for these claims and as these claims are not related to the end of the tenancy, I dismiss these claims with leave to reapply. Leave to reapply is not an extension of any limitation period.

As the Landlord has some understanding of the Tenant's claim being related to the end of the tenancy and as the moving costs claim may reasonably be seen as related to the end of the tenancy without further particulars, I accept that the Tenant's application has sufficient particulars for this claim. However, given the undisputed evidence that the Tenant moved out on their own choice, I find that the Tenant has not substantiated that the Landlord breached the Act or tenancy agreement giving rise to the damages claimed. I therefore dismiss this claim.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application comply for dispute resolution claiming against the security deposit. Where a landlord fails to with this section, the landlord must pay the tenant double the amount of the security deposit. Section 90(a) of the Act provides that a document, if given or served by mail, unless earlier received, is deemed to be received on the fifth day after it is mailed. Given the Tenant's supported evidence of having sent their forwarding address to the Landlord by registered mail on October 25, 2020, I find that the Tenant served the Landlord with its forwarding address as required under the Act. Given the Landlord's evidence that they

did not move out of the unit I find that the Landlord was residing at the unit at the time the mail was sent and the attempt for delivery was made. Given the postal evidence that the Landlord moved and was no longer at the address, I consider that some person, at the Landlord's peril, gave false information to the postal office that resulted in the mail not being collected by the Landlord. In these circumstances I find that the Landlord is deemed to have received the Tenant's forwarding address on October 30, 2021. As the Landlord did not return the security deposit or make any application to claim against the security deposit, I find that the Landlord must now pay the Tenant double the security deposit plus zero interest in the amount of **\$700.00**.

As the Tenant's application has met with some success, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$800.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$800.00**. If necessary, this order may be filed in the Small Claims 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: October 31, 2022

Residential Tenancy Branch