



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, MNSD, MNDCT, MNETC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for

- a monetary order of \$157.00 for the cost of emergency repairs;
- the return of the \$600.00 security deposit;
- a monetary order of \$1,530.00 for damage or compensation under the Act;
- \$1,200.00 in compensation related to a Notice to End Tenancy for Landlord's Use of Property; and
- recovery of the \$100.00 cost of her Application filing fee.

The Tenant and her translator/daughter, C.W., and the Landlord and her translator, S.C., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Landlord said she had received the Application and the documentary evidence from the Tenant and had reviewed it prior to the hearing. The Landlord confirmed that she had not submitted any documentary evidence to the RTB or to the Tenant.

Preliminary and Procedural Matters

The Parties provided their respective email addresses in the hearing, and they confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

At the outset of the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated four different matters of dispute; however, as we only had an hour for the hearing, I asked the Tenant which two claims were the most important for us to review today. The Tenant selected her claim for the return of the \$600.00 security deposit, and \$1,200.00 compensation related to the Landlord's Notice to End Tenancy for Landlord's Use of Property. We reviewed these two claims and the recovery of the Tenant's \$100.00 Application filing fee. The Tenant's other claims are dismissed with leave to reapply.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on October 2, 2020, with a monthly rent of \$1,200.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$600.00, and no pet damage deposit. They agreed that the tenancy ended on February 17, 2021, when the Tenant moved out. They agreed that the Landlord retained the Tenant's security deposit in full. The Parties agreed that the Tenant's friend, "J." was a mutual acquaintance who acted as the Tenant's forwarding address for the return of the security deposit.

#1 RETURN OF SECURITY DEPOSIT → \$600.00

In the hearing, the Tenant said:

When she passed the key to [J.] on February 17, and she told her that she wanted the security deposit back, [J.] said the Landlord told her that the Landlord wanted her to pay for the new flooring and to buy her a new toilet for the flooding. So, Mom said she was going to take that to the Branch to sort it out. Landlord was supposed to give the security deposit to [J.] as the forwarding address.

The Landlord replied:

She said that she told [J.] that the toilet was not broken and [the Landlord] never asked [the Tenant] to pay for all those things. She moved away quietly and didn't tell [the Landlord] that she was going to move out. She organized the moving quietly without telling anyone, so the relationship shouldn't finish this way.

[The Landlord] never asked [the Tenant] to pay for the floor damage. It was [the Tenant] who said that she was going to die and no longer talk to [the Landlord]. [J.] said to wait for the gas bill and electricity and work on the balance, then [the Landlord] will give her the balance of the security deposit. This is the message [the Landlord] forwarded to [J.]. [The Tenant] didn't want to communicate to [the Landlord].

**#2 COMPENSATION RE NOTICE TO END TENANCY FOR LANDLORD'S USE
→ \$1,200.00**

In the Tenant's Application, she said the Landlord owes her one month's rent, because the Landlord asked the Tenant to leave.

In the hearing, the Tenant explained:

Half of the \$1,200.00 she paid for February, and she wants \$600.00 back.

On the day that they hired someone to come fix the flood, [the Landlord] was screaming at my Mom, and she told my Mom to get out, and so that is why my Mom moved out. And she is requesting half of the \$1,200.00 to be refunded. This is February's rent. The flood happened on January 29th early in the morning. She kept saying it was my Mom's fault, because she was using toilet paper.

The Parties agreed that they reviewed other matters in a January 28, 2021 hearing.

The Landlord replied, as follows:

On January 28th, the Tenant accused the Landlord [in another hearing] on January 28, 2021, and the next day the motor is broken. I don't have any idea of how it's broken, and then the flood in the basement.

[The Tenant] put her personal things on the stairway, so it blocked the way for

[the Landlord] to get downstairs - she had to go outside to go in. When trying to fix the problem, [the Tenant] came out of the room and shouted, saying [the Landlord] is a bad person just like [the Tenant's] ex husband, and she said bad words. She pushed [the Landlord] to go out of the basement. She said, 'it's a pandemic, and you can't come into her living space', and [the Landlord] was trying to solve the problem.

[The Landlord] spent the money to get those problems fixed and never asked [the Tenant] for one cent. [The Tenant] said she's going to sue [the Landlord], and she wanted [the Landlord] to get out of her basement. [The Landlord] was there trying to solve the flood issue.

The Tenant's translator said:

I was physically there when the flooding happened. I was there when [the Landlord] called my Mom to tell her about the flood, which she said was because of the long hair and the toilet paper. She said my Mom sues everyone, which wasn't true. The other hearing is not relevant.

The comments about the second case - they are trying to insinuate that my Mom purposely flooded the place, which she did not.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

#1 RETURN OF SECURITY DEPOSIT → \$600.00

Section 38 of the Act states that a landlord must do one of two things at the end of the tenancy. Within 15 days of the later of the end of the tenancy and receiving the tenant's forwarding address in writing, the landlord must: (i) repay any security deposit and/or pet damage deposit; or (ii) apply for dispute resolution claiming against the security deposit and/or pet damage deposit. If the Landlord does not do one of these actions within this timeframe, the landlord is liable to pay double the security and/or pet damage deposit(s) pursuant to section 38 (6) of the Act.

Based on the evidence before me overall, I find that the tenancy ended on February 17, 2022, and that the Landlord already had the Tenant's forwarding address via J. representing the Tenant in this regard.

There is no evidence before me that the Landlord returned any of the Tenant's \$600.00 security deposit or applied to the RTB for dispute resolution claiming against the security deposit.

The Landlord was required to return the \$600.00 security deposit within fifteen days after February 17, 2021, namely by March 4, 2021, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38 (1). The Landlord has provided no evidence that they returned any amount or applied to the RTB to claim against the deposit. Therefore, I find the Landlord failed to comply with her obligations under section 38 (1).

Since the Landlord has failed to comply with the requirements of section 38 (1), and pursuant to **section 38 (6) (b)** of the Act, I find the Landlord must **pay the Tenant double the amount of the security deposit**. There is no interest payable on the security deposit.

I, therefore, **award the Tenant with \$1,200.00** from the Landlord pursuant to sections 38 (6) and 67 of the Act.

**#2 COMPENSATION RE NOTICE TO END TENANCY FOR LANDLORD'S USE
→ \$1,200.00**

Section 49 of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit, if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the Act states that a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord an amount equal to one month's rent payable under the tenancy agreement.

However, there is no evidence before me that the Landlord served the Tenant with an eviction notice pursuant to section 49 of the Act. As such, the Tenant is not eligible for compensation pursuant to section 51 of the Act. Accordingly, I **dismiss this claim without leave to reapply**, pursuant to section 62 of the Act.

Summary

The Tenant is awarded **\$1,200.00** for the return of double the security deposit, because the Landlord failed to comply with section 38 (1) of the Act. As the Tenant is

partially successful in her Application, I award the Tenant with half of the Application filing fee for a total of **\$50.00**, pursuant to section 72 of the Act.

I, therefore, grant the Tenant a **Monetary Order** of **\$1,250.00** from the Landlord pursuant to section 67 of the Act.

Conclusion

The Tenant is partially successful in her Application, as she provided sufficient evidence to prove her claim for the return of the security deposit. As the Landlord failed to comply with section 38 regarding the security deposit, the Tenant is awarded recovery of double the security deposit for a total of **\$1,200.00** from the Landlord.

The Tenant's claim for recovery of a month's free rent for February 2021 is dismissed without leave to reapply, as the Tenant failed to provide sufficient evidence to prove this claim on a balance of probabilities.

The Tenant is also awarded **half of her \$100.00 Application filing fee**, given her partial success. The Tenant's other claims are dismissed with leave to reapply.

I grant the Tenant a **Monetary Order** of **\$1,250.00** pursuant to section 67 of the Act. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) 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: October 06, 2022

Residential Tenancy Branch