



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to return the security deposit (the deposit), pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

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

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

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 \$5,000.00."

Preliminary Issue - Service

The tenant served the notice of hearing and evidence (the materials) via registered mail on April 07, 2022. The landlord confirmed receipt of the materials in April 2022.

Based on the undisputed testimony, I find the tenant served the materials in accordance with section 89(1)(c) of the Act.

The landlord mailed her response evidence to the tenant on April 11, 2022 and October 14, 2022.

The tenant confirmed receipt of one evidence package in April 2022 and a second package on October 17, 2022. The tenant did not have time to review the package received on October 17, 2022, three days before the hearing.

Rule of Procedure 3.15 states:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

I accept the landlord's evidence served on April 11, 2022 in accordance with section 89 of the Act. The evidence served on October 14, 2022, five days before the hearing, is excluded, per Rule of Procedure. 3.15.

Issues to be Decided

Is the tenant entitled to:

1. an order for the landlord to return the deposit?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on July 15, 2019. Monthly rent was \$850.00, due on the first day of the month. At the outset of the tenancy a deposit of \$425.00 was collected and the landlord holds it in trust.

The tenant texted the landlord on February 14, 2022 to inform that he moved out and left the rental unit's keys under the front door mat on February 14, 2022.

The landlord confirmed she found the rental unit's keys around mid-February 2022.

The tenant texted his forwarding address to the landlord on February 14, 2022 at 5:18 P.M. The landlord confirmed receipt of the text message on February 14, 2022 at 5:19 P.M.

The tenant did not authorize the landlord to retain the deposit.

The landlord did not submit an application asking for authorization to retain the deposit.

Analysis

Based on the tenant's testimony, I find the tenant moved out and left the rental unit's key under the front door mat on February 14, 2022.

Based on the landlord's testimony, and considering section 90(d) of the Act, I deem the landlord found the rental unit's key on February 17, 2022.

I accept the undisputed testimony that the tenant served and the landlord received the forwarding address in writing on February 14, 2022.

The landlord has not brought an application for dispute resolution claiming against the deposit and did not return the deposit.

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. Pursuant to section 38(6) of the Act, the landlord must pay a monetary award equivalent to double the value of the deposit:

- (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.

[...]

- 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.

Residential Tenancy Branch Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline; it states:

B. 10. 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.

[...]

11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

[...]

Unless 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:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;

- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenant is entitled to a monetary award of \$850.00 (\$425.00 x 2).

Over the period of this tenancy, no interest is payable on the landlord's retention of the deposit.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee.

In summary, the tenant is entitled to \$950.00.

Conclusion

Pursuant to sections 38(6)(b) and 72 of the Act, I grant the tenant a monetary order in the amount of \$950.00. This order must be served on the landlord by the tenant. If the landlord fails to comply with this order, the tenant may file the order in the Provincial Court (Small Claims) to 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: October 20, 2022

Residential Tenancy Branch