



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, RPP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant January 25, 2022 (the “Application”). The Tenant applied as follows:

- For compensation for monetary loss or other money owed
- For return of the security deposit
- For return of personal property

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant. I told the Tenant they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant provided affirmed testimony.

At the hearing, the Tenant sought return of double the security deposit.

The Tenant said they had a prior RTB file; however, the Tenant could not provide the file number for this. The Tenant said the prior RTB file was their application which was dismissed with leave to re-apply given a service issue.

I have looked up the prior RTB file, File ending 3083. This was the Tenant’s Application for Dispute Resolution to reduce rent, for compensation and for return of the security deposit. The request for the security deposit was dismissed with leave to re-apply. The request for compensation was dismissed without leave to re-apply. I have reviewed the details of File 3083, including the final decision, and find that the request for compensation was the same as the request for compensation again made in the Application. The compensation sought in the Application is sought on the same basis

as the compensation sought in File 3083. The Tenant cannot re-apply for compensation when this request was dismissed without leave to re-apply. I again dismiss the Tenant's request for compensation without leave to re-apply. The Tenant is not permitted to make further compensation requests for issues outlined in File 3083 or the Application.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant's evidence.

The Tenant testified that the hearing package and their evidence were sent to the Landlord's residence by registered mail February 10, 2022, and provided Tracking Number 475. The Tenant submitted the customer receipt with Tracking Number 475 on it. I looked Tracking Number 475 up on the Canada Post website which shows the package was delivered to the Landlord February 16, 2022.

Based on the undisputed testimony of the Tenant, customer receipt and Canada Post tracking information, I am satisfied the hearing package and Tenant's evidence were served on the Landlord in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). Based on the Canada Post tracking information, I am satisfied the Landlord received the package February 16, 2022. I am also satisfied based on the evidence provided that the Tenant complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered the evidence provided. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to return of personal property?

Background and Evidence

The Tenant provided the following testimony and evidence.

Security deposit

There was a verbal tenancy agreement between the parties. The tenancy started October 01, 2021. Rent was \$850.00 per month due on the first day of each month. The Tenant paid a \$425.00 security deposit.

The tenancy ended October 30, 2021.

The Tenant sent their forwarding address to the Landlord's residence by registered mail January 30, 2022, and Tracking Number 055 relates to this. The Tenant submitted the customer receipt with Tracking Number 055 on it. I looked Tracking Number 055 up on the Canada Post website which shows the package was delivered to the Landlord February 04, 2022. The Tenant submitted a copy of the letter and forwarding address sent to the Landlord.

The Landlord did not have an outstanding Monetary Order against the Tenant at the end of the tenancy.

The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The Landlord did not apply to the RTB to keep the security deposit.

The Landlord still holds the security deposit.

No move-in or move-out inspections were done, and the Tenant was not offered two opportunities, one on the RTB form, to do these inspections.

Return of personal property

The Tenant is seeking return of clothing sent to the Landlord's address, which is also the address for the rental unit. The Tenant received confirmation that the clothing was delivered to the Landlord's address. The Tenant sent the Landlord a text message about the clothing; however, the Landlord refused to return it.

The Tenant submitted text messages showing they asked the Landlord to return clothes being delivered to the Landlord's address and the Landlord refused. The Tenant submitted a copy of a letter sent to the Landlord asking for return of the clothing. The Tenant submitted the receipt for the clothing.

Analysis

I accept the undisputed testimony of the Tenant and based on it, as well as the documentary evidence submitted, I make the following findings.

Security deposit

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

I find the Tenant paid a \$425.00 security deposit and that the Landlord still holds this.

I find the tenancy ended October 30, 2021.

I find the Tenant sent the Landlord their forwarding address in accordance with section 88(c) of the *Act*. I find the Landlord received the forwarding address February 04, 2022.

February 04, 2022, is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from February 04, 2022, to repay the security deposit or file a claim with the RTB against it.

The Landlord did not repay the security deposit or file a claim with the RTB against it within 15 days of February 04, 2022. Therefore, the Landlord failed to comply with section 38(1) of the *Act*.

Sections 38(2) to 38(4) of the *Act* state:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...

The Tenant was not offered two opportunities, one on the RTB form, to do move-in or move-out inspections and therefore the Tenant did not extinguish their rights in relation to the security deposit. Section 38(2) of the *Act* does not apply.

The Landlord did not have an outstanding Monetary Order against the Tenant at the end of the tenancy. Section 38(3) of the *Act* does not apply.

The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. Section 38(4) of the *Act* does not apply.

Given the above, I find the Landlord failed to comply with section 38(1) of the *Act* in relation to the security deposit and that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply. Therefore, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenant pursuant to section 38(6) of the *Act*.

The Landlord must return \$850.00 to the Tenant and the Tenant is issued a Monetary Order in this amount. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

Return of personal property

A landlord cannot keep a tenant's personal property unless the property is abandoned in which case the abandonment provisions in the *Residential Tenancy Regulation* apply and must be complied with. The property here was not abandoned, it was delivered to the Landlord's address after the Tenant moved out and the Tenant asked the Landlord for it. Pursuant to section 62 of the *Act*, **the Landlord is ordered to return the Tenant's package containing clothing to the Tenant immediately.**

Conclusion

The Tenant is issued a Monetary Order for \$850.00. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that court.

The Landlord is ordered to return the Tenant's package containing clothing to the Tenant immediately.

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 05, 2022

Residential Tenancy Branch