



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for a return of their security deposit and compensation for a monetary loss or other money owed.

The tenant, NM, the tenant's agent, JS, and the landlords attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to a return of a security deposit, doubled?

Background and Evidence

The tenant submitted that the tenancy started on October 1, 2019 and ended on October 1, 2021, for a monthly rent of \$1,500. The tenant submitted she paid a security deposit of \$750.

JS testified and referred to their written evidence. Among other things, the agent submitted that the tenant became a tenant of the landlord and that he, the agent, moved into the residential property on or about February 1, 2020, paying a separate security deposit. The agent submitted that he managed a number of properties for the landlord as a handyman. The agent confirmed that there were other dispute resolutions between him and the landlord, but those were on separate matters.

The agent submitted that the landlord was paid the \$750 security deposit by a government ministry, and the landlord cashed the cheque on September 18, 2019. The agent submitted that the landlord was provided the written forwarding address on October 23, 2021 and has not returned the security deposit.

The agent filed documentary evidence which included, but is not limited to, a letter of October 23, 2021, from the tenant granting authority to the agent to proceed on her behalf to collect the security deposit and to have the security deposit paid to the agent, proof of service of a written forwarding address, a written tenancy agreement showing JS as the tenant, a shelter information sheet showing a monthly rent of \$1,500 and no security deposit amount listed, and a previous Decision issued by another arbitrator on the agent's two disputes against the landlord. The agent confirmed 6 other disputes with the landlord.

Landlord's response –

The landlord submitted that the tenancy started in 2019, and that the applicant here, NM, was never a tenant, but that she was a guest of his tenant, the agent, JS. The landlord submitted that NM paid \$750 as part of her rent contribution for October 2019 and that JS paid the security deposit; however, the security deposit was used as part of rent. The landlord submitted that JS prepared a letter for NM in an attempt to get his security deposit back.

The landlord said that NM was not his tenant and owes her nothing. The landlord submitted that the letter shows JS' handwriting and that the government cheque was for half the rent.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The burden to prove their case is on the person making the claim.

Under section 38(1) of the Act, a landlord is required to either repay a tenant's security deposit or to file an application for dispute resolution to retain the deposit within 15 days of the later of receiving the tenant's forwarding address in writing or at the end of a tenancy. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of her security deposit.

I have reviewed all documentary evidence submitted by the parties and find the applicant, NM, submitted insufficient evidence that she paid a security deposit.

Although there was a written tenancy agreement with JS, there was none with the applicant. The agent or tenant submitted a government ministry shelter form showing a monthly rent of \$1,500, but there was not an amount put in for a security deposit on the form. Apart from that, the form had the word, "SAMPLE", written over the face of the document and there were no ministry internal codes placed on the document. I find it was unclear that the government ministry approved this monthly rent or payment of a security deposit.

Although the agent supplied evidence that the landlord received a \$750 cheque on September 18, 2019, it was unclear that this was payment for a security deposit. The tenant did not provide proof of other monthly rent payments to indicate any further payments, if any, were \$750 or \$1,500.

I place no weight on the move-in condition inspection report (Report) filed by the tenant noting the tenant paid a security deposit of \$750, as the Report was not signed or dated.

The tenant filed the Decision of another arbitrator, dated January 26, 2022, on the two applications for dispute resolution of JS. In that Decision, on the same residential property, JS submitted the monthly rent was \$1,500 and the security deposit was \$750, which matches the amounts listed the tenancy agreement between the landlord and JS.

In the January 26, 2022, Decision the other arbitrator found the landlord currently held a security deposit of \$750 for JS at that time. I find this Decision is an indication that JS paid a security deposit of \$750, not the applicant here. I find it more likely than not that JS paid the security deposit for the tenancy, not NM.

For these reasons, I find the applicant, NM, submitted insufficient evidence that she paid a security deposit as claimed. I therefore dismiss her application, without leave to reapply.

Conclusion

The tenant's application is dismissed, due to insufficient evidence that she paid a security deposit.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 17, 2022

Residential Tenancy Branch