



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for the return of the security deposit that the Landlord is holding without cause pursuant to Section 38 of Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenant testified that he served the Landlord with the Notice of Dispute Resolution Proceeding package on April 20, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was deemed served with the NoDRP package five days after mailing them on April 25, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord served the Tenant with his evidence by Canada Post registered mail on October 5, 2022. The Landlord referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant confirmed receipt of the Landlord's evidence. I find that the Landlord's evidence was deemed served on the Tenant on October 10, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to an Order for the return of the security deposit that the Landlord is holding without cause?
2. Is the Tenant entitled to recovery of the application filing fee pursuant to Section 72 of the Act.

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on November 1, 2021. The fixed term was to end on October 31, 2022. Monthly rent was \$1,275.00 at the end of the tenancy payable on the first day of each month. A security deposit of \$600.00 was collected at the start of the tenancy and is still held by the Landlord. The tenancy ended on February 15, 2022.

The Tenant submitted invoices relating to the tenancy agreement. The Tenant submitted a November 1, 2021 receipt for the \$600.00 security deposit.

The Tenant's forwarding address was personally served on the Landlord on February 15, 2022. The Tenant uploaded his Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit, form #RTB-41. The Landlord confirmed receipt of the Tenant's forwarding address.

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.

The Tenant did a move-in condition inspection with the Landlord at the start of the tenancy; however, the form is not signed by the Tenant. The Tenant testified that the Landlord sent him a copy of the move-in condition inspection. Neither the Tenant nor the Landlord uploaded a completed move-out condition inspection at the end of the tenancy, but the Tenant stated this was done after the rental unit was cleaned by his cleaning person.

Analysis

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 accept the testimony of the Tenant and I find the following:

- The tenancy ended February 15, 2022.
- The Tenant's forwarding address was provided to the Landlord in writing and the Landlord received this February 15, 2022.

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

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

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

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- (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 participated in a move-in condition inspection with the Landlord. The Landlord uploaded a move-in condition inspection, but the form is not signed by the Tenant. The Tenant said he participated in a move-out condition inspection but neither the Landlord nor the Tenant uploaded the executed move-out condition inspection report. I find the Tenant did not extinguish his 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 \$1,200.00 to the Tenant. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

As the Tenant was successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to Section 72(1) of the Act.

In total, the Tenant is entitled to \$1,300.00 and I issue the Tenant a Monetary Order for this amount.

Conclusion

The Tenant is issued a Monetary Order for \$1,300.00. 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.

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